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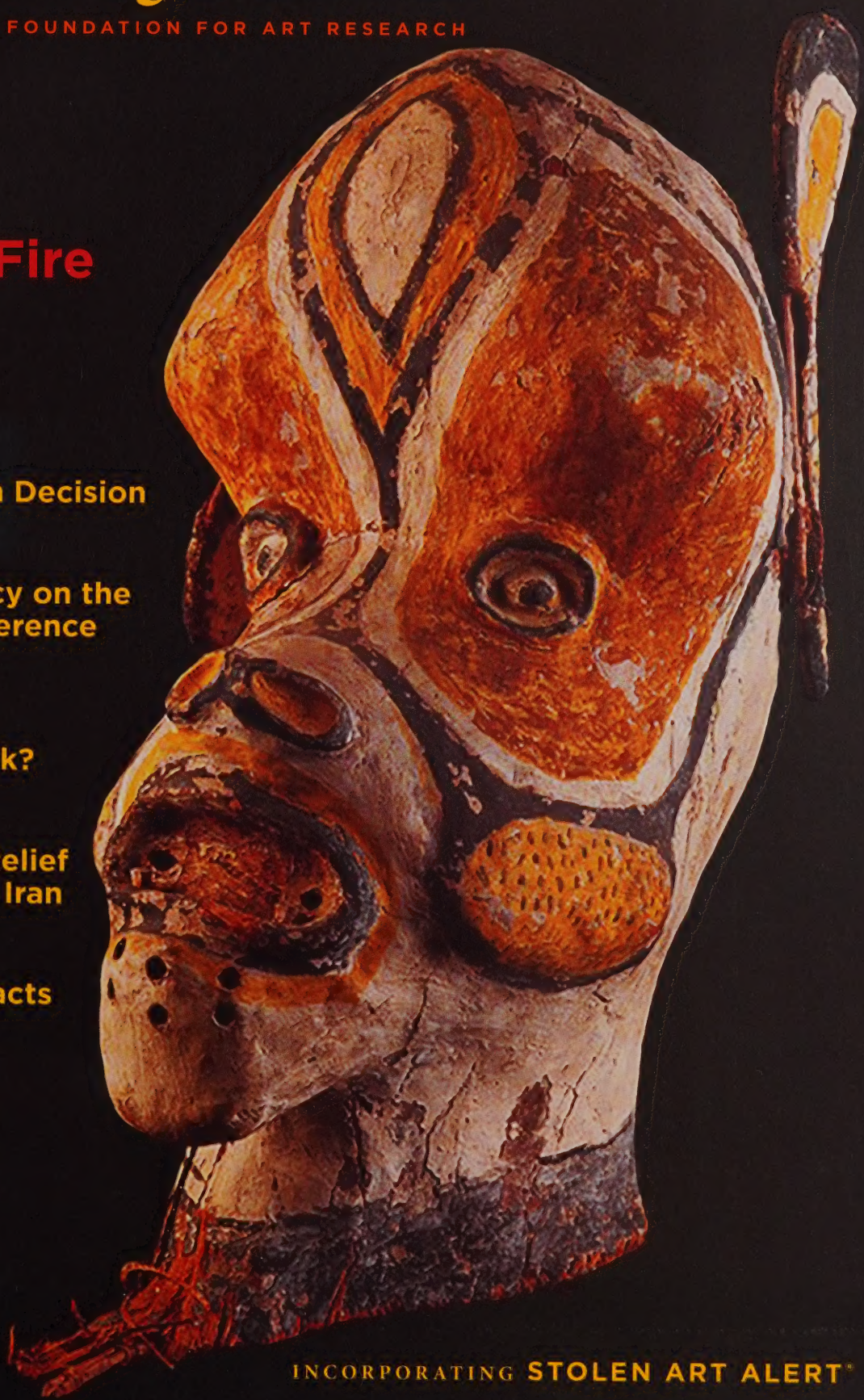

INCORPORATING **STOLEN ART ALERT®**

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COVER: A Tikuna mask designed by Jean-Baptiste Debret during the French Artistic Mission (1816-31). Part of the collection at Brazil's National Museum and probably lost to fire. Ph. Credit: Museu Nacional Brasil.

ATTEMPT TO BROADEN DEFINITION OF "NAZI-ERA LOOTED ART" STYMIED

MATISSE'S *GRETA MOLL* TO REMAIN AT LONDON'S NATIONAL GALLERY

A New York lawsuit which would have significantly expanded the definition of "Nazi-era looted art" failed in September 2018 when the U.S. Court of Appeals for the Second Circuit upheld a lower court's rejection of claims to a Matisse painting.[1]

The claimants in the case were the heirs of a non-Jewish German art collector whose painting was allegedly stolen in 1947. These facts alone created an uphill battle for the claimants, but the case was given a hearing nevertheless – in two countries.

FIGURE 1. Henri Matisse, *Portrait of Greta Moll,* 1908. Oil on canvas, 93 x 73.5 cm. (approx. 36 ½″ x 29″). The National Gallery of Art, London. © 2018 Succession H. Matisse/ARS NY.

The story began in 1908, when Berlin art collector Oskar Moll commissioned Henri Matisse to paint a portrait of his wife Greta **(FIG. 1).** The painting survived the war, but following Oskar's death in 1947, Greta entrusted the work to a friend to deposit with a Swiss art dealer. Instead, the friend allegedly sold the work and kept the proceeds. The Matisse passed through several hands before being purchased by the National Gallery of Art, London in 1979.

By the early 1980s, Greta Moll's heirs knew the whereabouts of the painting. They did not contact the National Gallery to seek its return, however, until 2011. When this proved unsuccessful, Moll's heirs filed a claim in 2014 with the U.K.'s Spoliation Advisory Panel (SAP), a government advisory committee tasked with issuing recommendations on Holocaust-era art restitution claims. In 2015, the SAP ruled that it lacked jurisdiction to hear the claim because the painting had been stolen two years after the war.

The Moll heirs responded in 2016 by filing a lawsuit in the U.S., in the Federal District Court for the Southern District of New York, against the National Gallery, the United Kingdom as a whole, and The American Friends of the National Gallery of Art, London, a New York-based nonprofit.

The National Gallery moved to dismiss the claim on numerous grounds, including the U.S. Foreign Sovereign Immunity Act (FSIA) and the equitable doctrine of laches, which applies when a plaintiff's undue delay in filing suit harms the defendant. The museum argued that, as an institution run by the British government, it was protected from suit in the U.S. by the FSIA and that its actions did not fall within the expropriation exception to the FSIA because neither the British government, nor the National Gallery had stolen the Matisse. Moreover, it noted that the Molls, as non-Jewish Germans, had not been subjected to persecution.

The museum based its laches argument on the fact that the heirs had known since the 1980s that the Matisse was in the museum, but did not seek its return, let alone file suit, until 2011.

The district court agreed with the National Gallery's arguments, dismissing the case on FSIA grounds in September 2017. The Moll heirs appealed, but in September, the Second Circuit unanimously affirmed the lower court's decision on substantially the same grounds.

—NICHOLAS DIETZ
Legal Research Associate

1 *Williams v. National Gallery of Art, London,* No. 17-cv-3253 (2d Cir. Sept. 10, 2018).

• • •

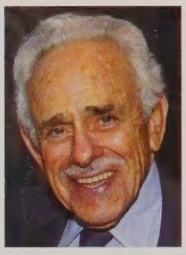
IN MEMORIAM

DAVID CAMPBELL

1920–2018

BUSINESSMAN, COLLECTOR, PHILANTHROPIST
MEMBER, IFAR BOARD OF DIRECTORS, 1988–2010

WE WILL MISS YOU



"PERSIAN GUARD" RETURNS HOME

In September, an ancient limestone relief seized from a New York art fair last year was returned to Iran. The relief, a 5th century BC fragment depicting a Persian Guard **(FIG. 1),** was given to the Iranian ambassador to the United Nations by the New York County District Attorney's Office. Later that month, Iranian President Hassan Rouhani, in New York for the opening of the U.N. General Assembly, took possession of the work and personally brought it back to Iran.

The episode began in October 2017, on the opening day of the European Fine Arts Fair (TEFAF) at the Park Avenue Armory. While stunned onlookers watched, law enforcement personnel descended upon the booth of British antiquities dealers Rupert Wace and Sam Fogg. They seized the 8″ x 8″ Persian Guard Relief, which was being offered for sale for $2.5 million, alleging that it had been looted from Persepolis, Iran in the 1930s, and smuggled out of the country[1] in violation of Iran's National Heritage Protection Act of 1930.[2]

This is only one of many recent examples of the stepped up activities of the New York County District Attorney's Office, which has been zealous (critics would contend overzealous) in its efforts to combat the illicit trade in cultural property. In 2017, the Office even established an "Antiquities Trafficking Unit," the first of its kind in the U.S.

The tale of the Persian Guard begins in the early 1930s, when the Oriental Institute of the University of Chicago was conducting archaeological excavations at Persepolis, capital of the ancient Persian Empire (ca. 518–330 BC). Among their finds was the "Tripylon," a structure consisting of three gated entryways to the royal apartments. Running along the length of the northernmost entryway was a large limestone bas-relief depicting numerous Persian Guards **(FIGS. 2A & B).** In 1935, the top portion of one of the figures was stolen from the site and smuggled out of Iran.

The Guard Relief was not seen again until December 1950, when it was offered for sale by an art dealer in New York. It was purchased in January 1951 by Cleveland Morgan, a Canadian art collector and scholar, who promptly

FIGURE 1. Limestone relief fragment of a Persian Guard (ca. 5th century BC), 8″ x 8″.

1 *In the Matter of Items Seized from the Park Avenue Armory,* No. 30219/2017 (N.Y. Sup. Ct. July 23, 2018).

2 An English translation of the 1930 law can be found on IFAR's Art Law and Cultural Property Database at www.ifar.org.

FIGURE 2. One of two photographs of Persepolis likely taken during the Oriental Institute's excavations in the 1930s. The arrow points to the figure believed to be the Guard Relief *in situ*. Courtesy, Oriental Institute of the University of Chicago.

donated the work to the Montreal Museum of Fine Arts, where it remained for six decades, until it was stolen in 2011.[3] Canadian authorities recovered the work in 2014, but the museum's insurance company, AXA Art Insurance, had already paid for the loss and the museum declined to take the relief back. As a result, AXA retained possession until 2016, when the work was purchased for approximately $900,000 by the London-based galleries Rupert Wace Ancient Art and Sam Fogg, Ltd.

It was seized the following year, when the gallerists attempted to sell it in New York. In November 2017, the DA's Office filed a motion in the New York State Supreme Court's Criminal Branch seeking a turnover order granting possession of the Guard Relief to Iran. Wace and Fogg argued that they had good title to the work, as they had purchased it in good faith and its provenance had never been called into question despite its decades-long presence at a public museum and well-publicized theft in 2011. They further asserted that since the DA's Office had not filed any criminal charges, the case was essentially a dispute over title, which should be adjudicated in a civil court. In a December 2017 ruling, the court agreed that the case should be decided in civil court.

When several months passed without Wace and Fogg initiating a New York civil proceeding over title to the relief, the DA's Office grew concerned that they might bring an action in Canada instead, as AXA had recently done. Such an action, in a country the DA's Office deemed "a safe-haven jurisdiction that permits stolen works of art to be laundered with the passage of time," would have left "New York County [with] no say in the disposition of the Persian Guard Relief."

Consequently, in May 2018, the DA's Office filed a 75-page motion, again seeking a turnover order, but also presenting documents from the Oriental Institute containing information about the alleged theft of the relief in the 1930s, as well as evidence that the Montreal museum itself may have known that the work was stolen before acquiring it in 1951. If true, this would prevent the museum from passing on good title to the work. Lastly, the DA's Office asserted that Wace and Fogg had not performed their due diligence in investigating the relief's provenance.

In a response filed in early July 2018, Wace and Fogg claimed that the DA's Office was trying to relitigate the issue of whether the court could even hear the case. They also asserted that the Oriental Institute's documents did not prove that the relief was removed from Persepolis in the 1930s, as dozens of works, many held by prominent museums, had already been removed from the site prior to the excavations. Moreover, Wace and Fogg contended that key information the DA pointed to as evidence of their lack of due diligence was inaccessible to them. For example, photographs that, according to the DA, show

[3] Interestingly, the relief was rarely on display and was described in only one museum publication, in 1960. Its theft in 2011, however, drew new attention to the work, but did not elicit any claim that it had been looted from Persepolis.

the Persian Relief *in situ* **(FIG. 2)** are *not* included in the Oriental Institute's searchable Persepolis Photographic Archive.[4]

Nevertheless, the parties came to an agreement on July 23, 2018. Wace and Fogg waived their rights to the Persian Guard Relief and, in return, the DA's Office agreed not to bring charges against them for "any act or failure to act" that had enabled them to acquire the work. The New York State Supreme Court then issued a turnover order, authorizing the District Attorney's Office to transfer custody of the relief to Iran, where, following its return by the Iranian president, it was put on display at the National Museum in Tehran.

—N. D.

and **SHARON FLESCHER**
Executive Director

4 Indeed, IFAR was only able to locate the images by following the detailed search instructions provided in Wace and Fogg's filing. The Oriental Institute's own blog, when reporting on the 2011 theft of the relief, made no mention of these photographs, despite the fact that they purportedly depict the relief in question and were in the Institute's very own collection.

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CPAC UPDATE

NEW LEADERSHIP, PROPOSED MOUs, AND THE ISSUE OF JEWISH COMMUNAL PROPERTY

In September 2018, the United States extended for 5 years a Memorandum of Understanding (MOU) with Cambodia restricting the importation of certain cultural objects from that country into the U.S. This marks the third extension of the Cambodian agreement, which originally entered into effect in 2003 (superseding emergency restrictions imposed in 1999).

In May and July 2018, the State Department's Cultural Property Advisory Committee (CPAC), headed by its new chairman, Dr. Jeremy Sabloff, held hearings to consider extending existing MOUs with China, Honduras and Bulgaria, and review new applications submitted by Ecuador and Algeria. (CPAC was established in 1983, pursuant to the U.S. Cultural Property Implementation Act, which implemented the 1970 UNESCO Convention on Cultural Property.)

The three proposed MOU extensions are likely to be granted as, to date, CPAC has granted *every* MOU extension request it has ever received.[1] However, it is possible extensions will no longer be automatic, following the recent change in leadership at the State Department's Cultural Heritage Center, which oversees CPAC. Earlier this year, Maria Karoupas, who had served as Executive Director of the Center for more than two decades, retired and was succeeded by Andrew Cohen, an archaeologist and, most recently, Senior Cultural Property Analyst at the Center.

1 Although a MOU between the U.S. and Canada was allowed to expire in 2002, it is unclear whether Canada had actually requested an extension of the agreement.

JEWISH CULTURAL ARTIFACTS

Meanwhile, the proposed agreement with Algeria, mentioned in the last *IFAR Journal,* has stirred controversy due to its similarities to a criticized MOU the U.S. signed with Libya in February 2018. Jewish groups assert that the cultural objects prohibited from entry into the U.S. under the terms of these MOUs include items from Libya and Algeria's now-vanished Jewish communities.

In response to the public criticism of the U.S.-Libya MOU, in March 2018, a State Department official informed the Jewish Telegraphic Agency that the agreement did

not apply to Jewish "ethnological material" created within the past 250 years.[2] The actual text of the Libyan MOU, however, does not contain this language. In fact, the word "Jewish" does not appear at all. Interestingly, the 2017 Emergency Import Restrictions on objects from Libya, which formed the basis for the 2018 MOU, included a specific reference to "scroll and manuscript containers for Islamic, *Jewish,* or Christian manuscripts." But, when the restrictions governed by the 2018 MOU were published in July, this line had been revised to read: "scroll and manuscript containers for manuscripts." Apart from the deletion of a typo, this was literally the *only* difference between the 2017 and 2018 agreements.

Opponents of the proposed Algerian MOU contend that much of the private and communal property of the Algerian Jewish community, which numbered as many as 140,000 people, was expropriated by the government or had to be abandoned because Algerian Jews were driven from the country in the years after the establishment of Israel in 1948. By terming these objects "Algerian" cultural property, critics assert that the MOU would effectively declare Algeria the legal owner of property taken from its Jewish population, which they compare to permitting Germany to retain objects looted from Jews during the Holocaust.

A similar argument has been made – successfully, thus far – with regard to objects taken from Iraq's former Jewish community. As in Algeria and Libya, the Jewish population of Iraq was driven out of the country and forced to abandon the majority of its property and cultural objects. Unlike Algeria and Libya, however, the Iraqi government collected a substantial amount of Jewish communal property and stored it in one centralized location: the basement of the Iraqi intelligence service's headquarters. When American forces discovered the treasure trove in May 2003, many of the works had suffered severe water damage due to flooding caused by military operations. In an effort to save the artifacts, U.S. forces took possession of the cache and shipped it to the U.S. for preservation and restoration, with the promise that the works would be returned to Iraq after they had been restored.

Once on American soil, however, many people – including Jewish-Iraqi exiles and members of Congress – objected to the idea of returning the works, now known as the "Iraqi Jewish Archive." In July 2018, for example, a bipartisan bill was introduced in the Senate stating that "the Iraqi Jewish Archive should be housed in a location that is accessible to scholars and to Iraqi Jews and their descendants who have a personal interest in it" and that while the Senate "reaffirm[ed] the United States' commitment to cultural property under international law," it was also committed to "ensuring justice for victims of ethnic and religious persecution."[3]

Over the past 15 years, numerous purported deadlines for the return of the objects have come and gone, most recently in September 2018, and there seems every indication that the artifacts of Iraq's Jewish community will remain in the U.S.

In sharp contrast, many fear that the 2018 Libyan MOU and proposed Algerian MOU will have exactly the opposite result, prohibiting objects from the Jewish communities of those countries from ever entering the U.S.

—N.D.

2 Josefin Dolsten, "Some Jewish Artifacts from Libya can still be Brought into US, Despite New Import Restrictions," *Jewish Telegraphic Agency,* March 27, 2018.

3 S. Res. 577 (July 18, 2018).

• • •

AGNES MARTIN UPDATE: ONE CASE BECOMES TWO

In a case that has been closely followed within the art world[1] and by IFAR,[2] the New York State Supreme Court dismissed a lawsuit in April, filed by the London-based Mayor Gallery against Agnes Martin Catalogue Raisonné (AMCR), the committee compiling the catalogue raisonné for the late Canadian-American artist. The suit was spurred by AMCR's decision to reject 13 works the Mayor Gallery had submitted for inclusion in the catalogue raisonné, without providing any explanations **(FIG. 1).**

Despite some reports to the contrary, the court did not hold that authentication committees as a rule may reject works without explanation; the decision was limited to AMCR and was based on a specific clause in the contract between the gallery and AMCR which explicitly stated that AMCR was not required to provide explanations for its rejection of purported Agnes Martin works.

The case is not over, however, and there have been significant developments in the past few months. Mayor had brought seven claims against AMCR, including product disparagement and tortious interference, and had sought $7.23 million in damages – the combined sales price of the 13 works. Although the court dismissed all seven claims in its April ruling, only one (an alleged violation of New York's General Business Law) was dismissed with prejudice, meaning that Mayor could amend its complaint and re-plead the six other claims. The court also ruled that Mayor could only seek damages for the purported Agnes Martin works that had actually been returned to the gallery, which, at present, stands at only three; the remaining works (worth over $3.5 million) are held by a single owner who has agreed not to seek reimbursement unless Mayor loses the suit.

Despite the court's stated restrictions, in an amended complaint filed on April 25, 2018, the Mayor Gallery re-pleaded all seven of its claims, including the one dismissed with prejudice, and again requested $7.22 million in damages. This portion of the case is currently proceeding before the New York State Supreme Court.

SPECIAL REFEREE

Just as the contract was the basis of the court's ruling that AMCR could reject works without explanation, in its April 5 decision, the court found the Mayor Gallery liable for AMCR's attorneys' fees, also based on a clause in the contract. However, the court decided to sever that issue from the rest of the case and submit it to a Special Referee for separate proceedings.

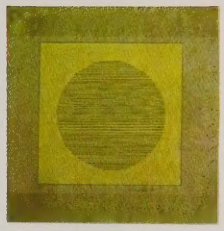

FIGURE 1. ***Untitled,*** 1959, ink and yellow wash on paper. One of the 13 purported Agnes Martin works at issue in the Mayor Gallery's lawsuit.

"The case is not over, however, and there have been significant developments in the past few months."

On May 2, Mayor filed a motion with the court – *not* the Special Referee – seeking to reargue the issue of attorneys' fees, asserting that AMCR should only be able to recover the fees it incurred in defending against claims arising from the parties' contract itself, specifically Mayor's "breach of contract" claim.

On September 5, 2018, the court denied Mayor's motion to reargue on procedural grounds, stating that Mayor had failed to attach copies of relevant documents from the court's earlier decision. This, despite the fact that AMCR

1 *Mayor Gallery v. Agnes Martin Catalogue Raisonné LLC*, No. 655489/2016 (N.Y. Sup. Ct. Apr. 5, 2018).

2 See *IFAR Journal*, Vol. 18, Nos. 2 & 3 (2017) and No. 4 (2018).

had not even raised the procedural issue in its opposition to the motion.

In its September ruling, the court barely addressed Mayor's argument that AMCR should only be able to recover fees for the contract claim. The court simply reiterated that the issue of attorneys' fees had been "severed and referred to a Special Referee" and such matters should therefore be heard by the Referee.

As a result, the parties are currently litigating the issue of attorneys' fees before a Special Referee, while simultaneously presenting arguments – in New York State Supreme Court – over whether AMCR can reject Mayor's works without providing reasons.

—N.D.

• • •

DISPUTED WAIVER DOOMS HEIR'S SUIT FOR NAZI-ERA ART

In September 2018, the New York State Supreme Court ruled against Margit Frenk, heir of German-Jewish art critic and collector Paul Westheim, in her effort to recover four Expressionist works Westheim had owned prior to World War II.[1] Unlike the typical case involving artwork lost during the Nazi Era, here, the alleged wrongdoer was actually a friend of Westheim's.

The case turned on a 1974 release signed by Westheim's widow, Mariana Frenk-Westheim, in which she gave up her right *and those of her heirs* to sue Westheim's friend, Charlotte Weidler, *and her heirs* for possession of any works from the collection. Based on the rather definitive wording of this contract, the court had little choice but to dismiss the lawsuit, as it involved the exact situation described. Frenk's only hope for success in her appeal (filed September 21) is to prove that the release was invalid, something she failed to convince the lower court of.

As background, Paul Westheim fled Germany soon after the Nazis came to power in 1933, entrusting his art collection to his friend Charlotte Weidler, a Berlin art dealer. Weidler left Germany herself in December 1939, leaving Westheim's collection with her sister Melitta.

Following the war, Westheim filed restitution claims with the West German government for the loss of his art collection. He was denied compensation, however, because, at the time, Germany did not compensate for property lost through "war damage," and Weidler's sister gave a sworn affidavit that the collection had been destroyed by Allied bombs. This affidavit, and the fact that none of his works had reappeared on the art market, led Westheim to conclude that the entire collection had indeed been destroyed.

In a 1960 article entitled "Remembering a Collection,"[2] Westheim described many of the works from his "collection [which] does not exist anymore," including four of the five at issue in the current case; namely, works by Erich Heckel, Otto Mueller, Max Pechstein, and Paul Klee.[3]

Unbeknownst to Westheim, who died in 1963, these four works

1 *Frenk v. Solomon*, No. 650298/2013 (N.Y. Sup. Ct. Sept. 10, 2018).

2 Paul Westheim, "Remembering a Collection," *Das Kunstwerk*, Vol. 14, No. 5/6 (1960/61).

3 Specifically: Heckel's *The Violinist;* Mueller's *Bathers;* Pechstein's *Portrait of Paul Westheim;* and Klee's *Opus 18.* The fifth work at issue, *Plastiche Imagination* by Edgar Jené, was not mentioned in Westheim's 1960 article.

and many others from his collection had in fact survived the war and, according to Frenk, had been shipped to Weidler in New York.

Frenk alleged that Weidler concealed the works so that she could sell them after Westheim's death. Westheim's widow, Mariana Frenk-Westheim, also believed her husband's collection had been destroyed. She did not discover the truth until 1973, when she learned that Weidler had sold Oskar Kokoschka's *Portrait of Robert Freund II* **(FIG. 1),** one of the works from the Westheim Collection described in the 1960 article.

FIGURE 1. Oskar Kokoschka *Portrait of Robert Freund II,* 1931. Oil on canvas. 74.9 x 52.1 cm. Private collection.

Frenk-Westheim sued Weidler in New York State Supreme Court in 1973 for conversion of the Kokoschka and fraud for allegedly convincing Westheim that his collection had been destroyed. She demanded Weidler return the Kokoschka and all other Westheim works in her possession, as well as "all monies received" from any previous sales of his works. Weidler claimed that she had purchased the Kokoschka and other works from Westheim prior to his fleeing Germany.

In 1974, the parties agreed to a settlement. In exchange for a payment of $7,500, Frenk-Westheim signed the "blanket release" referred to above, in which she gave up her right (and the rights of her heirs) to sue Weidler (and Weidler's heirs) for any present or future "claims and demands whatsoever" relating to the Westheim Collection.

Soon after the settlement, however, Weidler sought to sell yet another painting from the Collection, Otto Dix's *To Beauty* **(FIG. 2),** which was also mentioned in the 1960 article. A German art dealer, Edward Rathke, recognized the work and contacted Frenk-Westheim. In 1976, Rathke worked out an agreement whereby he would sell the Dix painting and pay $30,000 each to Weidler and Frenk-Westheim.

FIGURE 2. Otto Dix, *To Beauty,* 1922. Oil on canvas. 140 x 122 cm. Von-der-Heyt Museum, Wuppert. Photo: Erich Lessing, Art Resource, NY. ©ARS, NY.

Weidler died in 1983, leaving her estate, which included works from the Westheim Collection, to the Solomons (sons of her friends). Frenk-Westheim died in 2004, leaving Margit Frenk – the daughter of Frenk-Westheim and stepdaughter of Paul Westheim – as Westheim's sole heir.

"In a 1960 article entitled *Remembering a Collection*, Westheim described many of the works from his 'collection [which] does not exist anymore,' including four of the five at issue in the current case; namely, works by Erich Heckel, Otto Mueller, Max Pechstein, and Paul Klee."

In 2010, Frenk learned that the Solomons' inheritance included at least five Westheim works, one of which, *The Violinist* by Heckel **(FIG. 3),** they had sold in 1998 for

FIGURE 3. Erich Heckel, ***The Violinist,*** 1912. Oil on burlap, 92 x 54 cm.

nearly $1 million at Christie's London. In 2011, Frenk contacted the relevant parties, seeking the return of the works. Christie's and the buyer of *The Violinist* agreed to re-sell the painting and provide Frenk with a portion of the sales price. The Solomons, on the other hand, rejected Frenk's claims to the four other works: the Mueller, Pechstein, and Klee pieces mentioned in Westheim's 1960 article and an Edgar Jené work that was not in the article.

In 2013, Frenk filed suit against the Solomons in New York State Supreme Court seeking the return of the four Westheim works, which she valued at $2 million, and $1.6 million in damages from the 1998 sale of *The Violinist.* She also sought an accounting of any other works from the Westheim Collection that the Solomons currently, or previously, possessed.

The Solomons filed a motion to dismiss on the grounds that the 1974 document Frenk-Westheim signed to settle her lawsuit with Weidler had waived her interests, and those of her heirs, in any and all works from the Westheim Collection.

Frenk asserted that the 1974 "waiver" was invalid because it had been obtained through "fraud and deception" as Weidler had led Frenk-Westheim to believe that the Kokoschka was the only work to survive the war. Therefore, Frenk argued, the waiver should only apply to the Kokoschka painting.

According to Frenk, neither party believed the 1974 waiver applied to all works in the collection. As evidence, she pointed to the 1976 agreement in which – 2 years after purportedly waiving her interest in all remaining Westheim works – Frenk-Westheim and Weidler each agreed to accept $30,000 from the sale of an Otto Dix painting from the Westheim collection.

In December 2013, the New York State Supreme Court denied the Solomons' motion to dismiss, without comment, and ordered the case to proceed. The Appellate Division affirmed the decision in December 2014. This was followed by over two years of discovery and nearly a year of court-ordered mediation. In March 2018, the Solomons filed a motion for summary judgment, once again on the grounds that the 1974 document constituted a waiver of claims; similarly, Frenk's response reiterated her earlier arguments.

On September 10, 2018, the New York State Supreme Court ruled in favor of the Solomons, holding that the terms of the 1974 release signed by Frenk-Westheim were "unambiguous" and thus barred her heir (Margit Frenk) from filing suit against Weidler's heirs (the Solomons) for any works from the Westheim Collection. In addition, the court ruled that Frenk failed to show that the release had been obtained through fraud.

The court also rejected Frenk's assertion that the 1976 agreement to sell the Dix painting waived the 1974 agreement, stating that the waiver of an agreement cannot simply be "inferred," but must be "unmistakable."

Although she ruled against Frenk, Judge Andrea Masley struck a sympathetic tone, noting that she could not alter the terms of the 1974 agreement even if doing so would "reflect [her] personal notions of fairness and equity."

Frenk appealed the decision, and the case is currently pending in the New York State Appellate Division.

—N.D.

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HEAR ACT PLAYS KEY ROLE IN RETURN OF TWO SCHIELE WATERCOLORS

In one of the first restitution cases to be decided based on the 2016 Holocaust Expropriated Art Recovery Act (HEAR Act), in April 2018, the New York Supreme Court ordered the return of two Egon Schiele watercolors to the heirs of Austrian-Jewish art collector Fritz Grunbaum.[1] The decision contradicted a 2011 ruling by the federal court for the Southern District of New York *(Bakalar v. Vavra),*[2] denying the same heirs' claim for another Schiele work with nearly identical provenance.

FIGURE 1. Egon Schiele, ***Woman in Black Pinafore,*** 1911. Gouache, watercolor and pencil on paper. 48.6 x 31.7 cm (approx 19 ⅛″ x 12 ½″). Photo: courtesy Richard Nagy Ltd., London.

Exactly what happened to Grunbaum's collection of more than 400 works, including 81 Schieles, during the War and its aftermath is unclear and disputed. What is known, however, is that Grunbaum was sent to the Dachau concentration camp in 1938 (where he died in 1941) and that his collection was inventoried by the Nazis later that year. In late 1938 and 1939, Grunbaum's wife Elisabeth (who would also die in the Holocaust), and her two sisters, acquired export permits for most of the works in the collection, but whether the works were ever actually sent abroad is unknown, as the shipping company they used was allegedly controlled by the Nazis.

At some point after the war, Mathilde Lukacs, one of Elisabeth's sisters, came into possession of many works from the Grunbaum collection. Exactly how and when Lukacs obtained the works is a crucial, but unknown, piece of information, as it would help establish whether or not they were ever in Nazi hands. As it happened, Lukacs' possession of Grunbaum works was only revealed in 1955 and 1956, when she sold 54 Schieles to Swiss art dealer Eberhard Kornfeld, including the two works at issue in this case, *Woman in a Black Pinafore* (1911) **(FIG. 1)** and *Woman Hiding Her Face* (1912) **(FIG. 2)**, as well as the contested painting in the *Bakalar* case, *Seated Woman with Bent Leg* (1917). In the years following their sale to Kornfeld, the Schieles changed hands several times.

The Grunbaum heirs, who questioned whether Lukacs ever actually sold the works to Kornfeld, asserted that Lukacs had never acquired good title to the works because once they had been transferred to the Nazi-run shipping company, they became stolen property and, as such, legal title could not be passed, not even to a relative of the original owner.

In 2004, London art gallerist Richard Nagy purchased *Woman in a Black Pinafore,* but voided his interest in the work in the midst of the *Bakalar* trial in 2011, only to repurchase it, along

FIGURE 2. Egon Schiele, ***Woman Hiding Her Face,*** 1912. Gouache, watercolor and pencil on paper. 31 x 47 cm (approx. 12 ¼″ x 18 ½″). Photo: courtesy Richard Nagy Ltd., London.

1 *Reif, Fraenkel, and Vavra v. Nagy,* No. 161799/2015 (N.Y. Sup. Ct. Apr. 5, 2018).

2 *Bakalar v. Vavra,* 819 F. Supp. 2d (S.D.N.Y. 2011).

with another "Lukacs-Kornfeld" Schiele *(Woman Hiding Her Face),* after the *Bakalar* decision was upheld on appeal in 2012. In the *Bakalar* case, the federal court denied the Grunbaum heirs' claim to *Seated Woman with Bent Leg* solely on laches grounds, holding that the heirs had known about the lost Grunbaum collection for decades, but had made no attempt to locate the allegedly stolen works until the late 1990s. Although not the basis of its decision, the *Bakalar* court also expressed its belief that none of the Lukacs-Kornfeld works had ever been stolen by the Nazis.[3]

OFFERED IN NEW YORK

In November 2015, Nagy offered his two Schieles for sale at the Salon of Art + Design in New York, whereupon the Grunbaum heirs filed suit in New York State Supreme Court seeking their return.

Nagy sought to have the case dismissed on the grounds of collateral estoppel, holding that the *Bakalar* decision was binding as a bar to claims for *any* works from the Grunbaum Collection. The heirs, however, contended that the *Bakalar* decision only applied to the work at issue in that case, *Seated Woman with Bent Leg,* and had no bearing on their claims for *Woman in a Black Pinafore* and *Woman Hiding Her Face.* The court agreed with the heirs, ruling in 2016 that the 54 Lukacs-Kornfeld Schieles should not be considered one unified collection, but, rather, 54 *individual* works.

The Grunbaum heirs moved for summary judgment in May 2017, again arguing that Nagy had never acquired good title to the works because they were stolen property.

On April 4, 2018 the New York Supreme Court found in favor of the Grunbaum heirs based on the HEAR Act. It noted that the HEAR Act and current U.S. policy hold that because of "the difficulty of tracing artwork provenance due to the atrocities of the Holocaust," a claimant must only demonstrate "reasonable proof" that he/she is the "rightful owner" of Holocaust looted work; the Grunbaum heirs had met this standard. This shifted the burden to Nagy to prove that the works had *not* been looted by the Nazis. As Nagy had failed to do this, the court ruled that the Grunbaum heirs held legal title to the two Schiele watercolors and ordered Nagy to return them.

In a "Supplemental Decision" issued on June 11, 2018, the New York Supreme Court ruled that Nagy had acted in bad faith in refusing to return the works when the heirs initially sought them. The court reasoned that, as an experienced art dealer, Nagy knew (or should have known) that the works rightfully belonged to the Grunbaum heirs. He was therefore ordered to pay damages, costs, and attorneys' fees "in an amount to be determined" at a later date.

"The court agreed with the heirs, ruling in 2016 that the 54 Lukacs-Kornfeld Schieles should not be considered one unified collection, but, rather, 54 *individual* works."

Nagy appealed both rulings on June 14 and sought to retain possession of the works pending the outcome of the appeal. However, in August 2018, the New York Supreme Court's Appellate Division denied Nagy's request to delay the transfer and he returned the Schieles to the heirs later that month. The heirs subsequently consigned the works to Christie's for eventual sale; their estimated value is approximately $4 million. In October, the heirs' attorney filed a bill seeking nearly $800,000 in attorneys' fees and costs.

Nagy asserted that he should not be liable for attorneys' fees

[3] Both the *Reif* and *Bakalar* cases were discussed briefly in *IFAR Journal,* Vol. 17, No. 4 (2017).

because his opposition to the heirs' ownership claims had been made in good faith. Moreover, he argued, the burden of proving bad faith lay with the heirs and they had failed to do so. In December, the court stayed the issue of attorneys' fees pending the outcome of Nagy's appeal.

REMOVAL FROM DATABASE

In a notable development in August, only 4 months after the New York court ruled that the two Lukacs-Kornfeld Schieles should be treated as Nazi-looted art, the German Lost Art Foundation, an organization funded by the German government to provide information on suspected Holocaust looted art, "de-listed" all of the Lukacs-Kornfeld Schieles from its registry, essentially stating that none of them had been looted by the Nazis – including the two that the court had just ruled *were* looted by the Nazis.

— **N.D.** and **S.F.**

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In Brief—

Sign of Hope Amidst Brazil Museum Wreckage

A bit of good news emerged from the wreckage of Brazil's National Museum in Rio de Janeiro ravaged by fire on September 2. In late October, one of the museum's most treasured artifacts was discovered to have survived the blaze, in relatively good condition. The artifact, "Luzia," one of the oldest human fossils in the Americas **(FIG. 1)**, dating back some 12,000 years, was a star attraction at the museum since its discovery in 1975.

Brazil's National Museum, located in the former palace of the Portuguese royal family, was the largest natural history museum in Latin America and housed nearly 20 million objects, the vast majority of which were individual examples of species of flora and fauna. The museum's other holdings included a significant collection of Egyptian artifacts and several Roman frescoes from Pompeii. It also housed a vast number of indigenous artifacts from Brazil—including from the Ticuna tribe **(FIG. 2)**—and across Latin America. In addition, the museum held century-old sound recordings of the last speakers of many now-extinct Amazonian languages.

FIGURE 1. Fossilized skull of the woman known as "Luzia" Photo: Museu Nacional Brasil.

FIGURE 2. Ticuna mask designed by **Jean-Baptiste Debret** during the French Artistic Mission (1816-31). Believed lost in the fire at Brazil's National Museum. Photo: Museu Nacional Brasil.

In the immediate aftermath of the fire, museum officials estimated that as much as 90% of its holdings had been destroyed. But the recovery of Luzia raises hopes that other artifacts thought to be lost may also have survived the fire. In fact, shortly after Luzia was recovered, researchers found another prized object from the museum's collection, the 4.5 billion-year-old "Angra dos Reis Meteorite." Not to be confused with the 6-ton "Bendegó Meteorite," which was prominently displayed near the main entrance and known to have survived the fire, the "Angra dos Reis" weighs only a few pounds, but is, arguably, more scientifically significant. In fact, when it was discovered in the 1800s, the mineral composition of the "Angra dos Reis" was so unique it led to the creation of a whole new category of meteorite named, in its honor, "Angrite."

Neither the full extent of the losses nor the exact cause of the fire are known, but outmoded fire prevention systems played a role.

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U.S. Sides with Germany in "Guelph Treasure" Case

There have also been new developments in another case IFAR is following. In our last issue, we reported that, on July 10, the U.S. Court of Appeals for the D.C. Circuit ruled that the heirs of a consortium of German-Jewish art dealers could proceed, in part, with their effort to recover a collection of medieval German relics known as the "Guelph Treasure." The heirs had filed suit against both the German government and the state-run Prussian Cultural Heritage Center (the *Stiftung Preussischer Kulturbesitz* or "SPK"), but the Court ruled that they could only move forward against the SPK, and dismissed Germany from the case. On September 7, Germany and the SPK petitioned the D.C. Circuit for a re-hearing

en banc. The following week, the United States joined the case, filing an amicus (friend of the court) brief in support of the Germany-SPK petition. Interestingly, the U.S. did not join the case until after the Court issued its July 10 ruling. On October 30, the heirs of the art dealers filed their response, opposing a rehearing. As the Journal went to press, the Court had not ruled on the matter.

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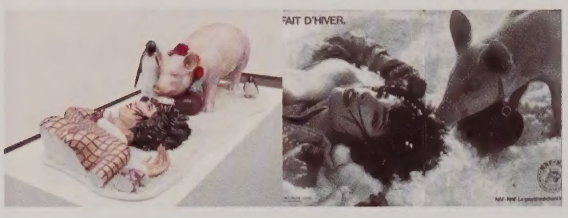
Koons Fined for Copyright Infringement in France, Again

Jeff Koons, who has repeatedly been charged with, and often found liable for, misappropriating the works of photographers, has been forced to pay up again. In November, a French court found him liable for infringing on a 1985 photograph by Franck Davidovici entitled *Fait d'hiver.* The photograph, an advertisement for a French clothing company, shows a woman lying in snow next to a pig. The court found that Koons' 1988 sculpture, also entitled *Fait d'hiver*, and also depicting a woman lying in snow next to a pig **(FIGS. 1A & B),** infringed on Davidovici's work and ordered Koons to pay him $170,000.

This marks the second successful infringement lawsuit brought by a French photographer against Koons stemming from a 2014 Koons retrospective at the Centre Pompidou in Paris. As reported in the *IFAR Journal* (Vol. 18, Nos. 2 & 3), a French court ruled in March 2017 that Koons' sculpture *Naked* infringed on a photograph by Jean-François Bauret and ordered Koons to pay $50,000. Interestingly, neither *Fait d'hiver* nor *Naked* actually appeared in the Paris Koons retrospective; both were pulled from the exhibition prior to its opening following objections by the photographers. Nevertheless, the French courts claimed jurisdiction to hear the disputes because the promotional material for the retrospective, disseminated in France, displayed images of the sculptures at issue.



FIGURES 1A and **1B.** Left: **Jeff Koons,** ***Fait d'Hiver,*** 1988 (image courtesy of Christie's); Right: **Franck Davidovici, *Fait d'Hiver*** advertisement for "Naf Naf" clothing, 1985 (image via Naf Naf).

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ARS and VAGA Merge

On July 26, it was announced that the Artists Rights Society, the largest artists rights organization in the U.S., had acquired the repertories of all artists represented by VAGA, its nearest U.S. competitor. From now on, the two repertories will be treated as one, under the aegis of ARS. The affiliation will be known as "VAGA at ARS" for the first year and thereafter as ARS.

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LETTERS TO THE EDITOR

REMINDER

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Dr. Sharon Flescher, Editor-in-Chief, *IFAR Journal*

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Italian High Court Rules Against the Getty

On December 3, Italy's highest court ruled that the celebrated "Getty Bronze" should be returned to Italy. The prized 2,300-year-old statue, discovered in the Adriatic Sea by Italian fishermen in 1964 and purchased by the Getty Museum for $4 million in 1977, has been the subject of litigation in Italy for over a decade. (See, among others, *IFAR Journal,* Vol. 19, Nos. 1 & 2 (2018)). Although the regional court in Pesaro, Italy, near the seaside town of Fano, where the work was first brought ashore, had ruled for the return of the statue on several previous occasions, its decisions had always been struck down by Italy's higher courts—until now. It is unclear exactly what the Getty will do next, but considering that a museum spokesman called the Italian court's decision "contrary to American and international law," the battle for the bronze seems far from over.

FIGURE 1. Statue of a Victorious Youth (Greek, 300-100 B.C.). Bronze with inlaid copper. 151.5 x 70 x 27.9 cm (59 ⅝" x 27 9/16" x 11"). Inv. no. 77.AB.30. Coll. J. Paul Getty Museum.

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DID FIDEL CASTRO REALLY OWN A POLLOCK?

LISA DUFFY-ZEBALLOS*

A wannabe Pollock with a supposed Castro connection is submitted to IFAR twice.

While IFAR recognizes the possibility that previously unknown works by Jackson Pollock still await discovery, when a purported Pollock (or other artist for that matter) emerges from obscurity, the question of how and why it has eluded the attention of scholars must be asked. To preempt those questions, therefore, fake Pollocks are often presented to IFAR's Authentication Research Service with elaborate—often absurd—histories and forged documentation.

One such example was a large and extremely atypical "Pollock" painting that was submitted with a dossier of documents and photographs attempting to show that the work had spent the past 50 years undetected in Castro's Cuba. Initially at least, we regarded the inquiry as an amusing example of false documentation and a reminder of the dangers of relying on photographic "evidence" in the digital era. It was only after the "Cuban Pollock" was *again* offered to IFAR for review five years later that we realized it was part of a wider group of fakes, prompting our decision to alert the public about yet another outrageous Pollock scam.

THE "CUBAN POLLOCK"

In 2013 a collector from Florida submitted a large vertical painting signed "Jackson Pollock" to IFAR **(FIG. 1).** The work was said to have once belonged to an unknown collector in Cuba. Pollock himself allegedly sent it to him in the 1950s, so that it could be sold to raise money for the Cuban Revolution. Instead of selling the painting, however, the collector kept it and later exhibited it at the historic Salon de Mayo in Havana in 1967. This provenance was supported by a number of obviously fake letters from Jackson Pollock—all written in poor English. In one letter, "Pollock" chastises the collector for keeping the first painting for himself. He then offers to send a *second* painting to sell to benefit the cause, thereby giving rise to the possibility of there being *two* "Pollock" paintings in Cuba.

FIGURE 1. "The Cuban Pollock," IFAR #13.09, submitted to IFAR. Paint on canvas, 81 ½ x 51 3/16 inches.

Further evidence of the painting's "revolutionary" pedigree was provided by the accompanying photographs. In one, a young Fidel Castro is shown with a member of his government, Mario Martinez **(FIG. 2).** Curiously, the painting is shown on its side, contrary to the vertical orientation of the signature. Other photos attempted to bolster the painting's connection to Pollock by showing it in the artist's studio (again hanging horizontally).

In concocting their narrative, the fakers capitalized on the fact that Pollock indeed harbored Communist sympathies in the 1920s and 1930s through his brief association with the Mexican Marxist painter David Alfaro Siqueiros and his Experimental Workshop in New York. Nevertheless, Pollock's political activities had largely ceased by the time Siqueiros left New York to join the Spanish Republican Army in 1937, and Pollock is not known to have had any

* Lisa Duffy-Zeballos, Ph.D. is the Art Research Director of IFAR.

FIGURE 3A (left). Photo said to show Pollock with IFAR #13.09 (Franz Kline painting visible in the background); **B)** Franz Kline in his studio with the same Kline painting in the background (1954). Unpublished *LIFE* photo. Photographer: Fritz Goro.

interest in Cuban politics during the 1950s. He died in 1956.

The claim that the painting was exhibited in Havana at the Salon de Mayo of 1967 was easily disproven. No works by Pollock were shown at the Salon de Mayo, and in fact, the only American artist exhibited was Alexander Calder.

IFAR was able to discover the source for the doctored photographs submitted to us. Two of the photos showed Pollock, or someone who looked like him, sitting in a spacious loft-style studio, with the IFAR painting visible behind him. In the background of one of the photos **(FIG. 3A)** was a small black and white painting that strongly resembled works by Franz Kline. An image search revealed that the IFAR photograph had been digitally altered from a 1954 photo of Kline taken for *LIFE* magazine **(FIG. 3B)**. Likewise, the image of Fidel Castro and Mario Martinez near the IFAR painting had been altered from a 1958 photograph of Franz Kline with the Venetian art dealer Carlo Cardazzo next to one of Kline's paintings **(FIG. 4)**.

It wasn't just the provenance that failed to convince. The painting's style, its rough-textured surface, and the use of a gold-toned paint have no relation to authentic works by Jackson Pollock. The paint was embedded with small particulate matter, possibly sand or plaster of Paris, and then sprayed over the entire surface to create a uniform texture. This technique, the Pollock experts we consulted noted, betrayed a misunderstanding of his working methods. While Pollock famously incorporated foreign body inclusions such as sand, pebbles and glass as collage elements in his dripped paintings, he did *not* use them to create an overall paint texture.

Moreover, in one specialist's opinion, the painting's composition of "broad spreading areas of closely toned color reinforced with nebula-like drips" made it look "more like a decorative surface treatment" than a serious work of art. IFAR's final report was unequivocal: not only was the "Cuban Pollock" unquestionably *not* by Jackson Pollock, but the presentation of fake documents and digitally manipulated photographs represented a deliberate and troubling attempt to deceive.

CASTRO'S POLLOCK

We assumed that this would be the last we would hear of the "Cuban Pollock", but this fake seemed to have as much staying power as Fidel Castro

FIGURE 2. Photo said to show Fidel Castro and Mario Martinez examining IFAR #13.09.

FIGURE 4. Photo of Franz Kline (seated) with Carlo Cardazzo in 1958. Unpublished *LIFE* photo. Photographer: Peter Stackpole.

FIGURE 5. Photo said to show Castro, Pollock and an unidentified man examining the Cuban Pollock in the U.S.

himself. In fall 2018, we were contacted by an art dealer with a client claiming to have a Pollock painting titled *Number 5, Untitled White (Spring and Gold),* which was said to have belonged to none other than Fidel Castro. The dealer, who was unaware of IFAR's previous report, forwarded an image of the work along with the accompanying documentation.

This was indeed the same painting that IFAR had rejected in 2013, now accompanied by a new set of fake documents and photographs. (We, therefore, did not review it again.) In the new provenance, Pollock allegedly presented the painting as a gift to Castro himself during the latter's visit to the United States in 1955.

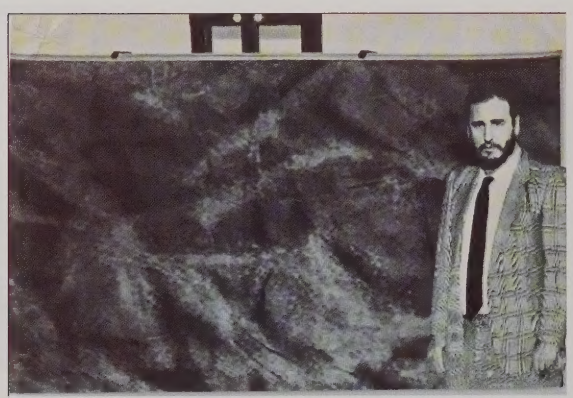


FIGURE 6. Photo said to show Fidel Castro in front of the Cuban Pollock (IFAR #13.09).

Evidence of their meeting was provided by a photograph showing a bald-headed man said to be Pollock, with a beardless "Castro" examining the IFAR painting **(FIG. 5).** The dossier also included a photo of an older Fidel Castro posing in front of the painting (once again hung horizontally) **(FIG. 6).**

The photographs of the canvas verso revealed an even bigger surprise; there was now a prominent inscription and signature **(FIG. 7),** where before there was nothing on the verso **(FIG. 8).** The inscription gives the painting's title as *"No. 5, Untitled/White,"* even though the painting is not white. The initials "L x K" presumably refer to Lee Krasner, while the inscription "50-5/№ 5" implies that this work "Number 5" was executed in May 1950. This is curious given the fact that Pollock's actual *Number 5, 1950* is in the Cleveland Museum of Art.

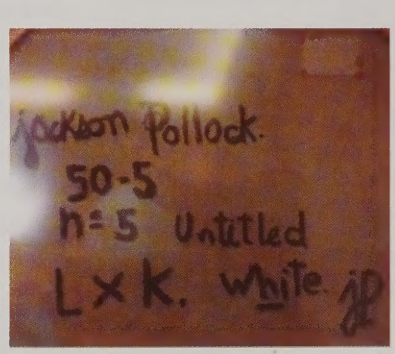


FIGURE 7 (left). Detail of the verso of the Cuban Pollock in 2018, showing the signature and inscription.

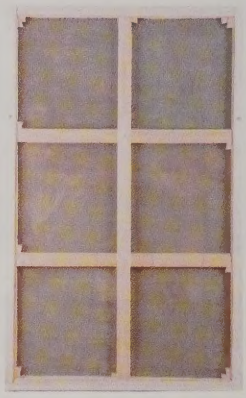


FIGURE 8 (right). Verso of the Cuban Pollock (IFAR #13.09) without an inscription when it was originally submitted to IFAR in 2013.

THE "SWEDISH POLLOCK"

Especially shocking was the fact that the newly added signature and inscription on the Cuban Pollock were already familiar to IFAR. We had only recently rejected *another* purported Pollock bearing an almost identical inscription **(FIGS. 9A & B).** That painting, titled *Number 11 (Untitled White),* was dated "50-4" (April 1950), and it, too, was signed on the back with Lee Krasner's initials bizarrely written as "L x K," and an identical fake Jackson Pollock signature and initials.

FIGURE 9A (top). The Swedish Pollock (IFAR #17.07); **B (bottom)** Verso showing inscription.

When *Number 11 (Untitled White)* was submitted to IFAR in 2017, we had no reason to suspect that it might be related to the Cuban painting. That work was sent to us from Spain and had a different provenance, which alleged that *Number 11* had been acquired by a member of the Swedish royal family from Lee Krasner through the French art dealer and critic Michel Tapié.

In hindsight, of course, the signs were there. Once again, the fraudsters used the title of an existing Pollock painting, *Number 11, 1950,* which is currently housed in the Thyssen-Bornemisza Collection in Madrid. And as before, the fakers took advantage of the fact that Lee Krasner indeed knew Michel Tapié, and mentioned visiting him and the Galerie Stadler in a letter she sent to Pollock from Paris in 1956.

Like the Cuban Pollock, the "Swedish Pollock" was submitted to us with an extensive dossier that included letters signed "Lee Krasner" written in poor English, as well as letters said to be from Michel Tapié in which his name is misspelled in the letterhead. Adding to the fake documentation, the Swedish Pollock bore a false French gallery label with a wax seal and stamps from Michel Tapié and the Galerie Stadler in Paris **(FIG. 10).**

This label may have inspired the faker of the Cuban Pollock to make it look like that work also once bore a gallery label and wax seals. The lighter-colored canvas exposed by the "missing" label shows the color of the canvas at the time it was reviewed by IFAR **(FIG. 7).** Clearly, in the intervening years, someone attempted to artificially age the canvas verso with a brown stain.

Although the inscriptions on the backs of the two paintings are calligraphically identical, stylistically they are nothing alike. The Cuban Pollock is spattered over with a heavy topography, its paint impregnated with sand-like inclusions; whereas, the Swedish Pollock is an open drip-style painting executed on a burlap canvas that was covered with an anomalous thick white ground. This disparity in style, execution and materials indicates that the paintings were not intended as a pair or even made by the same hand. Instead, someone who had access to both works copied near-identical inscriptions onto the backs of each, changing only the titles and the month of execution (April "50-4" and May "50-5") to make it seem as if they were part of a series from 1950.

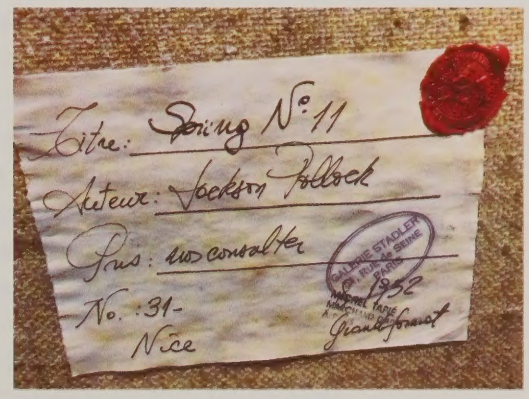


FIGURE 10. Label on the back of the Swedish Pollock, IFAR #17.07.

In light of this, it is likely that other paintings may be involved in this scam. So to anyone thinking of buying a so-called "Pollock" painting posing as March (50-3) or June (50-6), you have been warned!

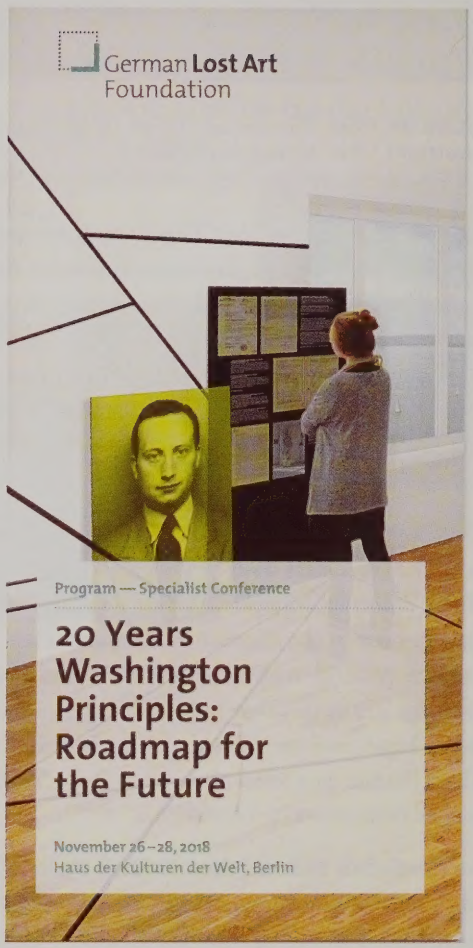
• • •

WASHINGTON PRINCIPLES – "A GLASS MORE THAN HALF-FULL"
THE ANNIVERSARY BERLIN CONFERENCE

DAVID D'ARCY*

In 1998, 44 countries met in the U.S. capital and adopted guidelines called the Washington Principles for resolving disputes over Nazi-looted art. Twenty years later, the framers of those guidelines gave a forceful but qualified endorsement of the principles in Berlin at a three-day conference, "20 Years Washington Principles: Roadmap for the Future."

Approximately one thousand participants assessed the field of Nazi-Era art restitution at the Haus der Kulturen der Welt, a late 1950's futurist Cold War monument on John-Foster-Dulles-Allee, now bordered by the glass and steel towers of the new Berlin.



"The U.S. and Germany issued a joint declaration (the only such official document promulgated at the conference) reaffirming their commitment to the Washington Principles."

The Cold War setting was more than coincidence. The United States initiated the meeting in 1998 and provided a venue. As with the Marshall Plan, Germany was the crucial European partner this year as it was 20 years ago.

The anniversary conference was organized by the German Lost Art Foundation. Despite the international range of participants, the focus was weighted toward Germany, and the U.S. and Germany issued a joint declaration (the only such official document promulgated at the conference) reaffirming their commitment to the Washington Principles.

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Institutional leaders cited the progress that had been made in the original mission to reach "just and fair solutions." Claimants and their lawyers bemoaned the slow pace of recovery of pillaged property. Provenance researchers, practicing a craft advanced by the search for Nazi loot, talked of scant resources to address enormous tasks. Central to the event was an inventory of countries, with a report card on how they measured up to the 1998 principles. Critics suggested that the real problem might be the framework itself.

No one said that the job was over. If there was a consensus, it was that the Washington Principles, like the field of restitution, was a work in progress, a conclusion reached by an independent observer – Elinor Landmann, a Swiss journalist designated by the conference – who reported to assembled participants after two days of meetings.

Ronald Lauder, the former ambassador and art collector who was one of the conveners of the 1998 conference, said: "We have made giant strides toward achieving the goals of identifying, publicizing, restituting, and compensating for some of the looted art, cultural objects, and books, and in so doing, providing some small measure of belated justice to some victims of the Holocaust or their heirs. We could not have foreseen how relevant this issue would still be 20 years later."

In a keynote address that had its stern moments, Lauder reminded his audience of the need for consistency, compassion and efficiency in addressing claims by theft victims and their heirs and reaching "just and fair solutions." "The Washington Principles don't tell countries how to work out the legal details of return because every country has a different legal system. Instead, the Principles encourage countries to find Jewish art in their museums, their institutions, and private collections that was stolen by the Nazis," he said.

Lauder moved quickly to identify countries that he thought had fallen short. "In almost every country in Europe, there are different reasons that this has happened, but in the end, it all comes down to one issue—justice has been denied—and because of that the old ghosts of World War II won't go away.

"In France, after the war, 60,000 artworks came back, of which 15,000 went unclaimed. Of those, France gave 2,000 of the best works to its museums and sold all the rest," he said.

"For 20 years, France has not been able to figure out who owns those 2,000 works in their museums, which is interesting. Somehow the auction house, Christie's, can review 100,000 pieces every year, but France cannot figure out 2,000 pieces in 20 years," he noted.

"For 20 years, France has not been able to figure out who owns those 2,000 works in their museums, which is interesting. Somehow the auction house, Christie's, can review 100,000 pieces every year, but France cannot figure out 2,000 pieces in 20 years," Lauder noted.

The Netherlands, also faulted by Lauder (and others throughout the conference), had gone down the wrong path, Lauder said, by failing to recognize sales during wartime as coerced and by introducing an approach that balanced the interests of museums that held looted art against the interests of families from whom the objects had been stolen. The balance of interests would be a flashpoint over two days.

Lauder also took aim at Spain, a country that's normally not at the center of conversations about Nazi-looted art, saying that it was deficient in searching its museum collections for pillaged works. And Switzerland, where works seized in Germany were sold before and during World War II, had failed to trace works that were seized from Jews, Lauder said.

After praising his host, Monika Grütters, the German Minister for Culture and the Media, as "someone with the best of intentions," Lauder described Germany as a maze of federalist bureaucracies where local governments create roadblocks and auction houses do as they please without regard to provenance.

"If there is just one stolen work in each museum, which is quite possible, plus all the other institutions throughout the country, we are talking about

many thousands of pieces that are still hidden," he said.

Lauder left the conference after his address, but Stuart Eizenstat, another former ambassador and 1998 convener, who also gave a keynote address in Berlin, stayed for much of the first two days. He, too, echoed praise for the original framework of the Principles and voiced his doubts about whether countries were honoring its spirit.

"In making a fair assessment of the success of the Washington Principles," he said, "I believe the glass is slightly more than half-full, but that is not satisfactory. It is time for one last push to correct the flaws in implementing the Washington Principles, both in my country, the United States, and in key countries which still have Nazi-looted art in their possession. With the assistance of advanced digital technology, which did not exist at the time of the Washington Conference, there can be no excuse for failing to have the widest distribution of information about Nazi-looted art and cultural property, including books."

"In making a fair assessment of the success of the Washington Principles," [Eizenstat] said, "I believe the glass is slightly more than half-full, but that is not satisfactory."

"No museum, state-controlled or private; no art gallery or collector; no auction house; no private owner, should want to hold or deal in Nazi-looted artworks, stripped in the most violent way from their owners during World War II," he continued. "Every nation that committed to the Washington Principles and the Terezin Declaration should redouble its efforts to identify, publish, and restitute or compensate or find other 'just and fair solutions' when an owner or heir has a legitimate claim."

"More broadly, good faith implementation of the Washington Principles can help in a more general way beyond Nazi-looted art, by creating a more transparent global art market, with greater assurance that buyers and sellers have the fullest information about the provenance of the art in which they are dealing," Eizenstat noted.

The art market also came to the attention of Hermann Parzinger, director of the Stiftung Preussiche Kulturbesitz, or SPK (Berlin Museums), who acknowledged that some German auction houses remained out of compliance with the Washington Principles. Parzinger also said that German private collections were difficult to monitor. The German Limbach Commission, set up to review and advise on claims, was faulted by a range of speakers for considering far too few claims on works in German museums, although German authorities were commended for their actions, albeit belated, on the Gurlitt hoard found in a Munich apartment in 2012 (and another cache later found in Salzburg). Long lines at a concurrent exhibition[1] at Berlin's Martin Gropius Bau that was devoted to works acquired and held by Gurlitt was evidence that the subject of restitution had found its way to a general German public. The Museum Berggruen also organized an exhibition with the provenance of works from its collection.

Eizenstat made special mention of Russia in his remarks. "Russia suffered greatly at the hands of the Nazis during the War. The Red Army took substantial artworks from Germany at the end of the War as partial compensation for their grievous losses, but this included some art the Nazis had taken from German Jews. At the conclusion of the Washington Conference," Eizenstat continued, "the Russian government representative joined my closing news conference to announce their restitution of one such work in their collection. They also passed a law that distinguished their trophy art from that which belonged to Jews and would be treated according to the Washington Principles."

But any commitment, he suggested, seems to have ended there. "There has been some provenance research started at Russian cultural institutions, and some is recorded on an electronic database of all displaced cultural property and is also published in scientific publications and shown in

1 "Gurlitt Status Report: An Art Dealer in Nazi Germany," Martin Gropius Bau, 14 September 2018 – 7 January 2019.

exhibits. But there has been no restitution of any Nazi-looted art, nor any process for their identification or handling of claims," he said.

No one representing Russia or any Russian institutions was there to respond to Eizenstat at the Berlin conference. Now were there participants from Hungary or Poland, both of which have veered toward right-wing populism in recent years. To be fair, although the French Ambassador to Germany, Anne-Marie Descotes, spoke at the beginning of the sessions on the second day of the conference, she left the hall before questions were asked from the floor about France's willingness to remove looted works from its official collections. French law currently prohibits the deaccessioning of art from French museums.

Decorum reigned for most of the two days of talks at the Haus der Kulturen der Welt (the third day was devoted primarily to workshops), where little time was provided for questions. Claimants and their lawyers were not among the invited speakers, except for a handful of heirs of theft victims whose claims had been successful, including heirs of the Jewish newspaper magnate Rudolf Mosse, who recovered property, some of which was purchased by the SPK of Berlin.

When voices did rise from the audience, out came the conflicts.

Marc Masurovsky, a co-founder of the Holocaust Art Restitution Project (HARP), which predates the Washington Principles, rose to state what he had already said in a widely-circulated article, that the Washington Principles had been a failure. (In an article in the *Observer* and in his blog, Masurovsky maintained that national governments that should be supporting provenance research were shortchanging that work because of the unflattering truths about those countries during World War II that might be revealed.)

Stuart Eizenstat's response to Masurovsky was rapid and harsh. Not true, said the American diplomat, ending that conversation, at least in public.

Another exchange on the floor came when the current chair of the Dutch commission, Fred Hammerstein, rose from his seat to tell the audience that the Dutch panel ruling on restitution always took the side of claimants. Eizenstat's response was to commend the Netherlands for its previous, early work in provenance research, and to reject the assertion that the Dutch government's recent approach of balancing the interests of museums holding looted art with those of theft victims was consistent with the Washington Principles. Claimants whose cases have been before those Dutch panels echoed Eizenstat's views.

The Dutch position shows no sign of changing. After the conference, Hammerstein defended balancing interests of museums and theft victims in the Dutch press. Russia and the recently elected populist governments of Poland and Hungary, were also challenged during the conference. No representatives of those governments were present to respond – not a positive sign for Jewish claimants seeking the return of property in those countries.

A delicate issue which arose was "heirless property," i.e., works of art and other objects looted from Jews for which no living heirs could be found.

Israeli speakers, such as Colette Avital, chair of the Center Organization of Holocaust Survivors in Israel, and Shlomit Steinberg, a curator at the Israel Museum in Jerusalem, suggested that art found to be heirless might eventually be sent to Israel.

Reading from a declaration passed in Israel in October, Avital noted that "we strongly believe that it is incumbent upon us to perpetuate the memory of the cultural life of the destroyed communities of which the looted works of art and sacred objects are part." She also called on museums "to allow in the meantime unclaimed looted art stored in museums to be temporarily loaned to and exhibited in museums in Israel and around the world. These works should be displayed with appropriate explanations of the circumstances of their looting."

"We urge countries and museums," she added, "to make a firm commitment to take the appropriate steps to return the works of art that are so loaned for exhibition to their rightful owners when claims for restitution are filed."

Calling Nazi-loot heirless has been a matter of debate, with many rejecting the "heirless" term outright. The Israeli proposal for loaning objects, rather than selling them, addresses a problem that arose in 1996. Objects presumed to be heirless at that time, which were looted from Jews who were presumed to have been killed, were stored in the Mauerbach Monastery in Austria. Those objects were auctioned by Christie's in Vienna, with proceeds going to the Jewish Community of Vienna. (The sale was the beginning of a historical shift in the auction houses' attitude toward restitution of art looted during the Nazi Era.) After the 1996 auction, people claiming to be heirs appeared and questioned the decision to sell the objects.

"If the conference had any drama onstage, it came from the ceramicist and author Edmund de Waal, a rare poetic voice in the field of restitution."

If the conference had any drama onstage, it came from the ceramicist and author Edmund de Waal, a rare poetic voice in the field of restitution. De Waal spoke of the impending "eve of departure," of those with a memory of life before the Holocaust. Speaking without notes (rather than reading a prepared script, as most speakers did), de Waal said, "It is time to restitute our story." Having recovered his family's large collection of netsuke after the war, including the hare with amber eyes, which was the focus of his best-selling book by the same name, de Waal's family recently sold 79 of those objects to benefit refugees in London, "because my father was a refugee child."

The other almost 200 netsuke in the collection have been placed on a ten-year loan to the Jewish Museum in Vienna.

De Waal spoke of a third initiative, an exhibition that he curated at the Kunsthistorisches Museum in Vienna. "That is another kind of restitution. It's saying that you don't have to wait for the government, for the national museum, for the provenance researchers – who are extraordinary – for the lawyers, who sometimes are extraordinary, for all the people to line up their extraordinary documents, and make something happen. You can take the issue, you can take the power of the story back to where it belongs. … You can bring back loss and make it into something else. I can look at the Kunsthistorishes Museum in the face. I can look at its shadows, its institutional shadows, and say, "I restituted you, not you restituted me."

De Waal received a standing ovation, the only one of the conference.

Yet de Waal's novel and generous approach to restitution might not have satisfied claimants who were still waiting to recover their families' property, as de Waal already had. For them, the "fair and just solution" was a promise still unkept, the part of the glass that remained unfilled.

Ronald Lauder put it simply in his opening remarks to conference participants: "In the United States, if a person is holding a stolen object, he is just as guilty as the thief who grabbed it in the first place. Nazi-looted art in Europe should be no different."

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THE NINTH CIRCUIT RULING IN FAVOR OF THE NORTON SIMON MUSEUM—IS THIS THE END TO THE DISPUTE OVER *ADAM & EVE?*

THOMAS R. KLINE and OLGA SYMEONOGLOU*

It has been more than eleven years since Marei von Saher, heir to pre-War Dutch art dealer Jacques Goudstikker, sued the Norton Simon Museum of Art in California seeking restitution of *Adam* and *Eve*, a pair of Renaissance works that have been on display at the Museum since 1971 **(FIG. 1).** Since then, the case has yo-yoed three times between the U.S. District Court for the Central District of California and the U.S. Court of Appeals for the Ninth Circuit. In the first two iterations, the district court ruled in favor of the Museum and the Ninth Circuit reversed and remanded the case to the trial court for further factual development and additional consideration. On July 30, 2018, however, the Ninth Circuit affirmed the lower court's third decision that the paintings can stay at the Museum.[1] Three months later, the Ninth Circuit denied von Saher's petition for rehearing.

In its third consideration of the case, the lower court held that the Dutch government's transfer of the paintings to another claimant in 1966 and its denial of von Saher's subsequent requests for restitution were valid under then-existing Dutch law.[2] But the Ninth Circuit affirmed on *other* grounds, holding that von Saher's claim cannot proceed because the Dutch government's actions are deemed valid and non-reviewable under a principle of U.S. law called the Act of State Doctrine. This doctrine provides that actions of a foreign government taken within its own territory cannot be reexamined or questioned by U.S. courts.

Subject to possible Supreme Court review, which von Saher will no doubt seek, the Ninth Circuit's decision marks the end of von Saher's decade-long effort to regain possession of these masterworks, painted by Lucas Cranach the Elder in about 1530.

FIGURE 1. Lucas Cranach the Elder, *Adam* and *Eve,* c. 1530. Both, oil on panel, 75 x 27 ½ in. Currently in the collection of the Norton Simon Museum, Pasadena, but claimed by Marie von Saher, heir of Jacques Goudstikker.

THE PAINTINGS

As is by now well known, the modern story of *Adam* and *Eve* begins in 1931, when Jacques Goudstikker, a prominent Dutch Jewish art dealer, purchased the paintings from the Soviet Union at an auction of the Stroganoff Collection in Berlin.[3]

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1 *Von Saher v. Norton Simon Museum of Art,* 897 F.3d 1141 (9th Cir. 2018) ("*Von Saher III*").

2 Cultural Heritage Partners filed an amicus brief in the Ninth Circuit urging rejection of the reasoning of the district court's decision.

3 As the Ninth Circuit observed in its latest decision, the parties dispute whether the Cranachs were ever part of the Stroganoff collection. For a more detailed discussion of the connection of these panels to the Stroganoff Collection, see, Sharon Flescher and Ann-Margret Gidley, " New Life Breathed into Claim for Norton Simon Cranachs," *IFAR Journal,* Vol. 15, no. 2 (2014), pp. 23-28.

In May 1940, Germany invaded The Netherlands, and Goudstikker fled Amsterdam on a ship bound for South America, along with his wife, Désirée, known as Desi, and their one-year-old son, Eduard, known as Edo, who would later marry Marei von Saher. They left the art gallery behind, but Goudstikker brought a black notebook with him, containing a list of all the works in his collection. Goudstikker died in an accident onboard the ship, and Desi inherited her husband's rights to the art collection.

"[After the War, Desi] and the other directors of the firm made [the] decision [not to pursue certain claims] knowingly and on the highly specific advice of the firm's advisors …"

The Goudstikker firm's art collection, and other property, was looted by the Nazis through two bogus contracts—one in which Herman Goering purchased hundreds of the most valuable artworks, including *Adam* and *Eve,* through a forced sale, and another in which Goering's agent, Alois Miedl, seized other property belonging to Goudstikker. After the War, Allied forces recovered much of Goudstikker's gallery stock and, in accordance with the policies then in place, referred to as external restitution, turned the artworks over to the Dutch government.

AFTER THE WAR

The Dutch internal restitution procedures after World War II were governed by a series of highly technical and constrained decrees.[4] One of these, Royal Decree E100, set a deadline of July 1, 1951 for the filing of petitions for restoration of rights in property recovered and returned to the Netherlands after the War. Desi sought restitution under E100 for the Miedl transaction and received a settlement, but decided not to seek restitution for the Goering transaction. Both the lower and appellate courts determined that she and the other directors of the firm made this decision knowingly and on the highly specific advice of the firm's advisors that the likely market value of the objects sought, including the *Adam* and *Eve* panels, would not exceed her obligation under Dutch law to repay to the Dutch government the amount Goering had paid to the firm for the property.

In 1961, Prince George Stroganoff-Scherbatoff ("Stroganoff") filed a claim with the Dutch government for the Cranachs and two other paintings, alleging that the Soviet government had illegally seized the paintings from his family long before the 1931 sale where Goudstikker had purchased them. Following years of negotiations, the Dutch government reached a settlement with Stroganoff under which it transferred *Adam* and *Eve* and one other painting to him in exchange for a modest payment from Stroganoff and his agreement to relinquish his claims to the Cranachs and a Rembrandt in the Dutch government's possession. A few years later, around 1971, he sold the two Cranachs to the Norton Simon.

Relying on the Dutch post-War decrees, in a decision one of the authors of this article referred to in a previous article in the *IFAR Journal* as taking a "narrow and technical" approach,[5] the lower court held that The Netherlands had good title to the paintings under Dutch law when it transferred them to Stroganoff in 1966, and thus, the Norton Simon acquired good title when it purchased the works from Stroganoff in 1971.

In 1998, after von Saher became the sole heir to the Goudstikker firm following Desi and Eduard's deaths, she revived the firm and petitioned the

[4] The decrees bear on the Ninth Circuit's decision to apply the Act of State Doctrine. Royal Decree A6, enacted by the Dutch government in exile after Germany invaded The Netherlands in 1940, "prohibited and automatically nullified agreements with the enemy," and created a special committee with authority to revoke this invalidity. Under this provision, in 1947, the committee revoked the invalidity of transfers of property to the enemy where the property had been returned to The Netherlands by the Allies. Royal Decree E100, enacted in 1944, established the procedure for post-War restitution, including a deadline of July 1, 1951 for filing of restoration-of-rights petitions. Finally, Royal Decree E133 provided that ownership of all enemy property passed to the state after the War.

[5] Thomas R. Kline, "Will Third Visit to Ninth Circuit be Déjà Vu All Over again for Norton Simon Museum?" *IFAR Journal,* Vol. 17, nos. 2 & 3 (2016). Mr. Kline's article discussed the district court's opinion at length. Since it began, the case as a whole has been covered extensively in this publication.

Dutch Ministry of Education, Culture, and Science for the return of the works sold in the Goering transaction that were in the Dutch collection. The Ministry rejected the request, finding that the firm had intentionally declined to submit a request for restoration of rights under E100 after the War for works "sold" in the Goering transaction.

Von Saher then filed a petition under E100 with the Dutch Court of Appeals in the Hague, the successor to the post-War Council for the Restoration of Rights. In 1999, the Court of Appeals denied the petition because it had not been submitted before the 1951 deadline. The court further declined to exercise its discretion to restore von Saher's rights in the paintings, reasoning that the firm after the War had made a "conscious and well considered decision to refrain from asking for restoration of rights with respect to the Goering transaction."[6]

Perhaps realizing that its post-War regime made it difficult for Holocaust survivors to pursue their claims, in 2001 The Netherlands established a "more moral policy approach" to restitution, recognizing that the previous "purely legal approach" had been "legalistic, bureaucratic, cold and often even callous."[7]

Finally, in 2004, von Saher filed a claim under The Netherlands' new restitution policy. She obtained a non-binding recommendation from the Dutch Restitutions Committee to the Dutch State Secretary that the works in the Dutch government's possession be returned. Notably, this claim did not include the Cranachs, because they were no longer in the Dutch government's possession, having been transferred to Stroganoff in 1966 and sold to the Norton Simon in 1971. The Dutch State Secretary determined that the 1999 Court of Appeals Decision had settled von Saher's claims and that she had no legal right to restitution, but decided nevertheless to return the works in the Dutch collection.

THE DOCTRINE

In affirming the lower court's decision on the third and most recent appeal, the Ninth Circuit did not reach the issue of whether the Dutch post-War decisions were correct or whether the Norton Simon had good title. Rather, the court held that von Saher's claims could not even be considered because doing so would involve questioning and possibly invalidating sovereign acts of the Dutch government. Under the Act of State Doctrine, U.S. courts may not review actions of foreign sovereigns concerning matters within their borders. The doctrine has a long history and serves a salutary purpose of protecting sister nations' decisions from close scrutiny in U.S. courts.

"In affirming the lower court's decision on the third and most recent appeal, the Ninth Circuit … held that von Saher's claims could not even be considered because doing so would involve questioning and possibly invalidating sovereign acts of the Dutch government."

The Ninth Circuit held that the Act of State Doctrine applies and bars von Saher's claims because "the relief sought by von Saher would necessitate our declaring invalid at least three official acts of the Dutch government performed within its own territory." These official acts were: (1) the Dutch government's decision to settle Stroganoff's claim in 1966; (2) the Dutch Court of Appeals' 1999 denial of von Saher's E100 petition seeking relief for all works in the Goering transaction due to the previous decision by Desi and the firm not to seek restitution for this property; and (3) the Dutch State Secretary's decision under the new 2001 restitution policy that, although the claims had previously been settled, works still in the government's possession should be returned.

The Ninth Circuit concluded that von Saher's claims could not succeed without requiring the court to evaluate the validity of these three official acts of the Dutch government, and it was unwill-

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6 *Von Saher v. Norton Simon Museum of Art at Pasadena*, CV 07-2866-JFW (SSx), 2016 U.S. Dist. LEXIS 187490, at *19 (C.D. Cal. Aug. 9, 2016).

7 *Von Saher III*, 897 F.3d at 1152.

ing to go down this road, noting that, on remand from *Von Saher II*: "The Museum also made the showing specifically requested in *Von Saher II*—that the conveyance to Stroganoff was a sovereign act made in consideration of a restitution claim. "The Ninth Circuit in *Von Saher II* (2014) had reversed the lower court's decision that von Saher's claims could not proceed because they conflicted with U.S. federal policy on art restitution, holding that there was no conflict between the claims and U.S. foreign policy because "the Cranachs were never subject to post-War internal restitution proceedings."[8]

NONE OF THE EXCEPTIONS TO THE DOCTRINE APPLY

In its 2018 decision, the Ninth Circuit further concluded that von Saher could not rely on any of the exceptions to the Act of State Doctrine. The court first considered the "purely commercial acts" exception, which applies where governments exercise powers not peculiar to sovereign nations, but those also available to private citizens. The court concluded that this potential exception would not apply because "expropriations, claims processing, and government restitution schemes are not the province of private citizens."[9] Rather, such actions are "sovereign policy decisions befitting sovereign acts."

Additionally, the "Second Hickenlooper Amendment" prevents application of the Act of State Doctrine to "a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law[.]"[10] The Ninth Circuit concluded that the Second Hickenlooper Amendment did not bar application of the Act of State Doctrine here because the Dutch government had not taken anything from von Saher's family in 1966 when it settled Stroganoff's claims, as the family had by that time failed to timely pursue a claim.[11]

Finally, the court noted that the policies underlying the Act of State Doctrine support its application to this case, as "[r]eaching into the Dutch government's post-War restitution system would require making sensitive political judgments that would undermine international comity."

IMPLICATIONS OF THE DECISION

As previously noted, the Act of State Doctrine prevents U.S. courts from reviewing an action taken by a foreign nation within its own territory. In deciding the case on this basis, the Ninth Circuit avoided ruling on the district court's third approach of conducting a detailed analysis of historical facts under post-War Dutch legal standards that have since been discredited by the Dutch government and replaced. Nonetheless, by affirming the lower court's decision, the Court of Appeals reaches the same result – respecting an ownership decision that the Dutch themselves might well question if considered today on the merits. Moreover, the decision arguably goes against U.S. restitution policy by validating the transfer of title initiated by Nazi looting.

It is not surprising that the Ninth Circuit based its decision on application of the Act of State Doctrine, since it had hinted in its second decision that it might apply the doctrine when the historical facts were more fully developed by the trial court. At the same time, the Ninth Circuit's two previous reversals suggested a third reversal might be in order, given the lower court's highly technical and dubious analysis under antiquated Dutch law—an approach the Ninth Circuit blew past in the latest decision. The result is that, after eleven years of litigation, the Goudstikker/von Saher claims were not decided on their merits, but were sent back and forth between the lower and

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8 *Von Saher v. Norton Simon Museum of Art*, 754 F.3d 712,725 (9th Cir. 2014) ("*Von Saher II*").

9 The Ninth Circuit has never decided whether such an exception exists, and did not decide that issue here.

10 22 U.S.C. § 2370(e)(2).

11 The Court of Appeals also held that the transfer to Stroganoff did not violate international law because it aligned with restitution procedures in place at the time. This finding provided an additional ground for the court's decision that the Second Hickenlooper Amendment did not apply, as it only bars application "when the governmental action violates principles of international law."

appellate courts to decide which technical defense applied. (Although not specifically stated as a basis for the decision, the Ninth Circuit did seem to place weight on the considered post-War decision by Desi and the Goudstikker firm not to advance their claim to the Cranachs.) In her concurring opinion, Judge Kim McLane Wardlaw agreed with the court's decision that the conveyance to Stroganoff was an official act of the Dutch government. But she maintained that "[t]he district court correctly dismissed this case on preemption grounds in March 2012.[12] Those grounds did not require any further factual development of the record[.]" In Judge Wardlaw's view: "here we are in 2018, over a decade from the date von Saher filed her federal action, reaching an issue we need not have reached, to finally decide that the Cranachs, which have hung in the Norton Simon Museum nearly fifty years, may remain there."

U.S. RESTITUTION POLICY

The actions described by the Ninth Circuit were, indeed, official acts of the Dutch government. But in applying the discretionary Act of State Doctrine in this instance, the court has reached a result that many would argue is contrary to U.S. restitution policy, which recognizes the importance of facilitating, rather than impeding, the restitution of Nazi-looted art. After World War II, the U.S. government supported external restitution, by which the U.S. would return property to the countries of origin, which would in turn restitute the objects to their rightful owners. In the 1990s, however, it became apparent that this post-War external restitution policy had not been entirely successful; many works confiscated by the Nazis during World War II were recovered by the Western Allies and returned to the governments of the countries from which they were stolen, but then were not restituted to their original owners. In 1998, the U.S. enacted two laws to assist Holocaust victims,[13] and later that year hosted the Washington Conference on Holocaust-Era Assets, which focused on equitable, rather than purely legal, solutions for restitution of Nazi-looted art.

"In applying the discretionary Act of State Doctrine in this instance, the court has reached a result that many would argue is contrary to U.S. restitution policy ..."

The Washington Conference resulted in the adoption of the Washington Conference Principles on Nazi-Confiscated Art, which call for provenance research of national collections, locating pre-War owners and their heirs and encouraging them to come forward, and striving to achieve "just and fair" solutions.[14] The Terezin Declaration, adopted in 2009, reaffirmed these nations' commitment to the Washington Principles and "encouraged all parties, including public and private institutions and individuals to apply them as well."[15] More recently, in 2016, Congress enacted the Holocaust Expropriated Art Recovery Act ("HEAR Act"), which extended the statute of limitations for Nazi-looted art to six years from the date a claimant actually discovers (1) either the identity or location of the artwork; and (2) the claimant's possessory interest in it.[16] These statements of U.S. policy on restitution of Nazi-looted objects demonstrate the importance of resolving claims on their merits, provided they have not already been resolved.

CONCLUSION

Many of the countries and non-governmental organizations that participated in the Washington Conference gathered in Berlin in the closing days of 2018 (November 26-28) to consider the current

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12 In *Von Saher II*, the Ninth Circuit reversed the district court's decision and held that von Saher's claims were not preempted by the federal policy respecting the finality of internal restitution procedures because *Adam* and *Eve* were never subject to internal restitution in the Netherlands. *Von Saher v. Norton Simon Museum of Art*, 754 F.3d 712, 721 (9th Cir. 2014).

13 The two laws were the Holocaust Victims Redress Act (Pub. L. 105–158, 112 Stat. 15) (HVRA) and the Holocaust Assets Commission Act (Pub. L. 105–186, 112 Stat. 611) (HACA).

14 *Von Saher II*, 754 F.3d at 721; Washington Conference Principles on Nazi-Confiscated Art, available at: https://www.state.gov/p/eur/rt/hlcst/270431.htm.

15 *Von Saher II*, 754 F.3d at 721.

16 Holocaust Expropriated Art Recover Act (Pub. L. 114–308, 130 Stat. 369) (HEAR Act).

status of the 1998 commitment to seek "just and fair" solutions to Holocaust-related art claims. In the wake of the Ninth Circuit's decision in the von Saher case, we must ask the same question asked in this publication two years ago after the district court's narrow and technical decision that has now been affirmed: how just and fair is this decision? The Ninth Circuit's opinion, in the interest of finality and comity between nations, gives deference to decisions that were made in the post-War era, possibly in a callous manner and under unjust standards that would not necessarily stand up to scrutiny in The Netherlands today. We must therefore consider on what level justice is being served.

If von Saher petitions the U.S. Supreme Court for review via certiorari (she has until February 8, 2019 to do so) she will give the Court the opportunity to consider whether the Ninth Circuit's decision under the Act of State Doctrine should be affirmed as consistent with U.S. policy to honor foreign country post-War determinations, or reversed as inconsistent with the U.S. policy of favoring "just and fair" resolution of Holocaust-related art claims.

"[It will be for the U.S. Supreme Court] to consider whether the Ninth Circuit's decision under the Act of State Doctrine should be affirmed as consistent with U.S. policy to honor foreign country post-War determinations or reversed as inconsistent with the U.S. policy of favoring "just and fair" resolution of Holocaust-related art claims."

• • •

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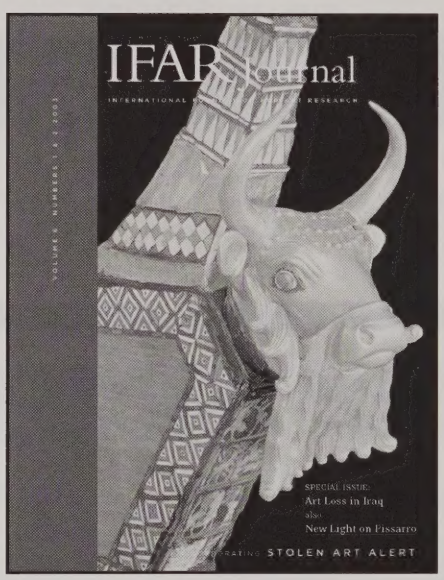

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STOLEN ART*

PAINTINGS

174. **JOSEF ALBERS** (1888-1976). ***Study for Homage to the Square: Teen Age.*** See color photo on inside back cover.

175. **NORBERT BISKY** (German, born 1970). ***Acéphale,*** 1970. Oil on canvas. 40 x 50 cm (approx. 15 ¾″ x 11 ¾″). *L18.1285. Stolen from a gallery in London, England on July 7, 2018.

175

176. **MISSY MCGUIRK MAUDE** (American, contemporary). ***View of the Ocean from the West,*** 2018. Painting on canvas. 48 x 60 cm (approx. 19″ x 23 ½″). Signed l/r: MMM. *L18.1801. Stolen from a private residence in Denver, CO on August 20, 2018.

176

177. **MARY MILSTEAD JOHNS** (English, contemporary). ***Carnival Child,*** 2003. Oil on board. 121.92 x 182.88 cm (48″ x 72″). *L18.1880. Stolen from a private residence in Arlington, England between September 1, 2017 and September 10, 2018.

177

178. **CLAUDE MONET** (French, 1840-1926). ***The Cliff at Aval, Étretat (morning),*** 1885. See color photo on inside back cover.

179. **GERARD ARIJ LUDWIG *"MORGENSTJERNE" MUNTHE*** (Norwegian, 1875-1927). ***Haven in Katwijk,*** 1904. Oil on canvas. 63 x 106 cm (approx. 24 ¾″ x 41 ¾″). *L18.1811. Stolen from a gallery in Amsterdam, The Netherlands on September 21, 2018. See also items 186-188; 201 below.

179

180. **DOUGLAS DEAN OHLSON** (American, 1936-2010). ***Untitled,*** 1989. Acrylic on canvas. 46 x 35 cm (approx. 18 ⅛″ x 13 ¾″). Signed and dated in graphite on verso: Ohlson A/C 1989. *L18.1759. Stolen in transit in Los Angeles, CA on September 16, 2017.

180

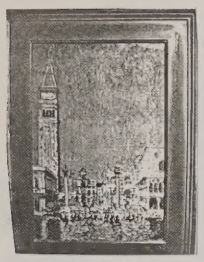
181. **JOHN PIPER** (English, 1903-1992). ***Abstract.*** Oil on canvas. 32.5 x 23.5 cm (approx. 12 ¾″ x 9 ¼″). *L18.1286. Stolen from a private residence in London, England on June 24, 2018.

181

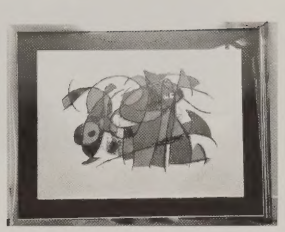
182. **PIERRE- AUGUSTE RENOIR** (French, 1841-1919). ***Golfe, Mer, Falaises Vertes,*** 1895. Oil on canvas. 27 x 40 cm (approx. 11″ x 16″). Signed l/r. *L18.2198. Stolen from the Dorotheum auction house in Vienna, Austria when thieves removed it from its frame during business hours on November 26, 2018.

182

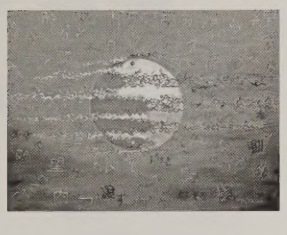
* Numbering for the Volume 19 Cumulative Index of Stolen Art began with Vol. 19, Nos. 1&2.



183



184



185

183. **WALTER RICHARD SICKERT** (English, 1860-1942). ***La Piazzetta – Venice.*** Oil painting. 60 x 30 cm (approx. 23 ⅝″ x 11 ¾″). *L18.1889. Stolen from a private residence in London, England on September 21, 2018.

184. **GEORGES SPIRO** (French/Polish, 1909-1994). ***Les trois arcs,*** 1950. Oil on canvas. 50 x 70 cm (approx. 19 ¾″ x 27 ½″). *L18.1661. Stolen in transit in Vandoeuvres, Switzerland on August 20, 2018.

185. **STEPHANIE SUTTON** (American, contemporary). ***The Poem,*** 2011. Oil on canvas. 40.64 x 50.8 cm (16″ x 20″). Signed "SS" on the verso on the frame. *L18.1668. Stolen in transit in Grayson, Georgia on May 10, 2011.

The following paintings were stolen from a gallery in Amsterdam, The Netherlands on September 21, 2018. *L18.1828. See also items 179 and 201:

186

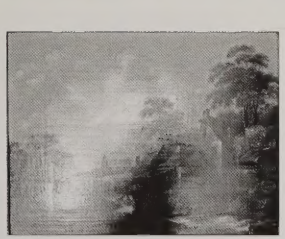
187

186. **FRANÇOIS BOULANGER** (Belgian, 1819-1873). ***Sailing vessel in a harbor near a dune.*** Oil on panel. 25 x 37 cm (approx. 9 ¾″ x 14 ½″).

187. **CORNELIS KIMMEL** (Dutch, 1804-1877). ***A Rhine Riverview with Cattle.*** Oil on panel. 51.51 x 64.49 cm (approx. 20 ¼″ x 25 ⅜″).

188

188. **PIETER LODEWIJK FRANCISCO KLUYVER** (Dutch, 1816-1900). ***A Panoramic River Landscape.*** Oil on panel. 22 x 33 cm (approx. 8 ¾″ x 13″). Signed l/l.



189

The following two paintings by **KLAES MOLENAAR** (Dutch, 1630-1676) were stolen from a private residence in Kapellen, Belgium on September 1, 2017. *L18.1673:

189. ***Village Near Water.*** Oil on panel. 45.01 x 60 cm (approx. 17 ¾″ x 23 ½″).

190

190. ***Village View.*** Oil on panel. 47 x 63 cm (approx. 18 ½″ x 24 ¾″).

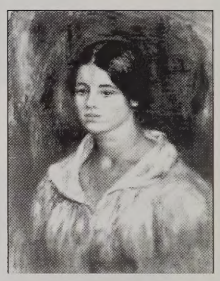
STOLEN ART

The following two paintings were stolen in transit in Berlin, Germany in 1938. *N78.326:

191. **CAMILLE PISSARRO** (French, 1830-1903). ***Chemin de plaine, avec un porte de jardin à droite – Dorfstrasse,*** 1871. Oil on canvas. 46.5 x 55 cm (approx. 18 ¼″ x 21 ½″). Signed l/l.

191

192. **PIERRE-AUGUSTE RENOIR** (French, 1841-1919). ***Tête de jeune fille*** (Gabrielle), 185. Oil on canvas. 48.5 x 39.5 cm (approx. 19" x 15 ½"). Signed u/l.



192

The following six paintings were stolen from a private residence in Waasmunster, Belgium on July 5, 2018. *L18.1269:

193. **HANS BOL** (Flemish, 1534-1593). ***Landscape with Transport Carriages.*** Oil painting. 30 x 40 cm (approx. 11 ¾″ x 15 ¾″).

193

194. **HANS BOL**. ***Landscape with Travellers.*** Oil painting. 30 x 40 cm (approx. 11 ¾″ x 15 ¾″).

194

195. **JAN VAN KESSEL** (Flemish, 1626-1679). ***Allegory of Earth/ Animals***, ca. 1650-1670. See color photo on inside back cover.

196. **JAN VAN KESSEL**. ***Allegory of Water/Fish***, ca. 1650-1670. Oil on copper. 20 x 30 cm (approx. 7 ¾″ x 11 ¾″). Signed approx. l/c.

196

197. **Unknown Artist**. (Dutch/Flemish, 16th-17th centuries). ***Still Life with Flowers.*** Oil on metal. 30 x 40 cm (approx. 11 ¾″ x 15 ¾″).

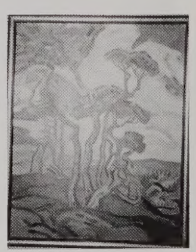
197

198. **Unknown Artist**. (Dutch/Flemish, 16th-17th centuries). ***Still Life with Fruit.*** Oil on metal. 30 x 40 cm (approx. 11 ¾″ x 15 ¾″).

198

The following two paintings by **AXEL TÖRNEMAN** (Swedish, 1880-1925) were stolen from a private residence in Stockholm, Sweden on May 3, 2018. *L18.1169:

199. ***Landscape,*** 1909. Oil painting. 79 x 64 cm (approx. 31″ x 25″).



199

200. ***Portrait of Karin Lindahl,*** 1918. Oil painting. 95 x 78 cm (approx. 37 ½″ x 30 ¾″).

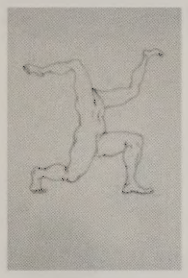
200

WORKS ON PAPER

201

201. **DAVID ADOLPH CONSTANT ARTZ** (Dutch, 1837-1890). ***A Walk in the Dunes.*** Watercolor and gouache on paper. 31 x 23 cm (approx. 12 ¼″ x 9″). Signed l/r. *L18.1828. Stolen from a gallery in Amsterdam, The Netherlands on September 21, 2018. See also items 179; 186-188.

202. **ALEXANDER CALDER** (American, 1898-1976). ***Untitled,*** 1966. See color photo on inside back cover.

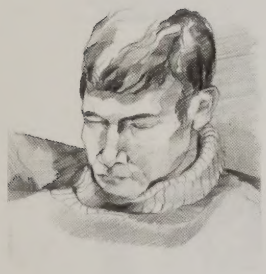


203

203. **ANGUS FAIRHURST** (English, 1966-2008). ***Man-Woman/ Woman-Man 2,*** 1996. Pencil on paper. 34.29 x 25.4 cm (approx. 13 ½″ x 10″). *L18.1224. Stolen from a vehicle in London, England in April 6, 2018.

204

204. **ANGELOS GIALLINOS** (Greek, 1857-1939). ***View of Corfu,*** 1889. Watercolor on paper. 40 x 74 cm (approx. 15 ¾″ x 29 ⅛″). *L18.1266. Stolen from a private residence in Athens, Greece on April 14, 2014.



205

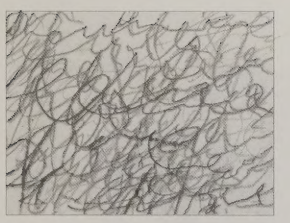
205. **SEAN SCULLY** (Irish/American, born 1945). ***Portrait,*** 1964. Pencil on paper. 33.78 x 9.75 cm (approx. 13 ¼″ x 3 ¾″). *L18.1589. Stolen in New York, NY on August 20, 2012.

The following 12 works on paper by **CY TWOMBLY** (American, 1928-2011) were stolen from a shipping company in Lugano, Switzerland on March 1, 2018. *L18.1242:

206

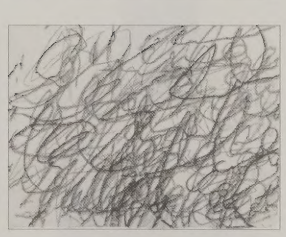
206. ***Delian Ode 41,*** 1961. Pencil, ballpoint pen, and colored pencil on paper. 33.5 x 35.5 cm (approx. 13 ⅛″ x 14″). Signed u/c in ballpoint pen. Titled u/r in ballpoint pen.

207. ***Untitled***, 2003. See color photo on inside back cover.



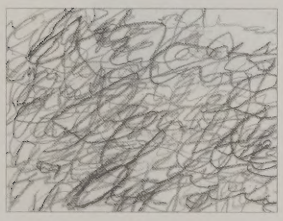
208

208. ***Untitled***, 2003. Wax crayon and pencil on handmade paper. 28 x 38.5 cm (approx. 11″ x 15 ⅛″). Initialed and numbered u/l on verso in pencil: CT(2).



209

209. ***Untitled***, 2003. Wax crayon and pencil on handmade paper. 28 x 38.5 cm (approx. 11″ x 15 ⅛″). Initialed and numbered u/l on verso in pencil: CT(3).



210

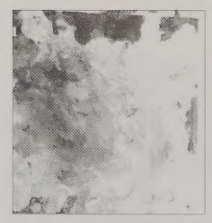
210. ***Untitled***, 2003. Wax crayon and pencil on handmade paper. 28 x 38.5 cm (approx. 11″ x 15 ⅛″). Initialed and numbered on verso in pencil: CT(4).

211

211. ***Untitled,*** 1986. Acrylic and wax crayon on paper. 28.4 x 26.39 cm (approx. 11 ⅛″ x 10 ⅜″). Numbered 1 of 7 in wax crayon on l/l of verso.

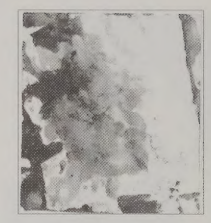
STOLEN ART

212. ***Untitled,*** 1986. Acrylic on paper. 29.79 x 27 cm (approx. 11 ¾″ x 10 ½″). Numbered 2 of 7 in wax crayon on l/l of verso.



212

213. ***Untitled,*** 1986. Acrylic on paper. 30 x 26.8 cm (approx. 11 ¾″ x 10 ½″). Numbered 3 of 7 in wax crayon on l/l of verso.



213

214. ***Untitled,*** 1986. See color photo on inside back cover.

215. ***Untitled,*** 1986. Acrylic and wax crayon on paper. 28.5 x 25.7 cm (approx. 11 ¼″ x 10 ⅛″). Numbered 5 of 7 in wax crayon on c/r of verso.

215

216. ***Untitled,*** 1986. Acrylic on paper. 28.5 x 26.5 cm (approx. 11 ¼″ x 10 ⅜″). Numbered 6 of 7 in wax crayon on center of verso.

216

217. ***Untitled,*** 1986. Acrylic on paper. 28.5 x 26 cm (approx. 11 ¼″ x 10 ¼″). Numbered 7 of 7 in wax crayon l/c of verso.

217

SCULPTURE

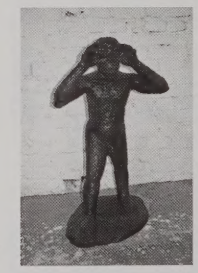
218. **ELIZABETH CATLETT** (American, 1915-2012). ***Sister in the Wind,*** ca. 2000. Bronze on a wooden base. 29.21 x 7.62 x 8.26 cm (11 ½″ x 3″ x 3 ¼″). *L18.1728. Stolen in transit in Oak Park, IL on July 26, 2018.

218

219. **JAMES FERRARI** (American, contemporary). ***Torso,*** 2014. 2014. Stainless steel and Ferrari car parts. 96.52 x 66.04 cm (38″ x 26″). *L18.1195. Stolen from storage in Garland, TX on June 21, 2018.

219

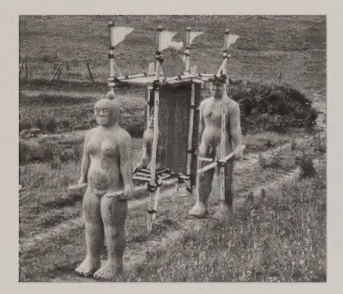
220. **JÖRG IMMENDORFF** (German, 1945-2007). ***"Malerstamm Michael" Monkey,*** 2002. Bronze. 92 x 51 x 41 cm (approx. 36 ¼″ x 20″ x 16 ⅛″). Ed. no. EAII. *L18.1867. Stolen in transit in Karlsruhe, Germany on September 6, 2018.



220

221. **Unknown Artist** (Italian, 18th century). ***Mercury,*** 1750. Bronze. 70.51 x 25 cm (approx. 27 ¾″ x 9 ¾″). *L18.1101. Stolen from a business office in Gloucestershire, England on May 9, 2018.

221



222

The following two sculptures by **DAVID GILBERT** (English, 1928-2016) were among approx. 50 works stolen from the David Gilbert Art Trust in Liverpool, England between October 4 and October 9, 2018. *L18.1905:

222. **DAVID GILBERT.** ***In the Presence of (Mountain Hares),*** c. 1982-84. Elm, oak, eucalyptus, mahogany, larch, gold ring, parrot feathers, linen, silver mirror. 225 x 300 x 65 cm (approx. 88 ½″ x 118 ⅛″ x 25 ½″).

223

223. **DAVID GILBERT.** ***Laburnum 3- Piece,*** 1974. Wood and oil. The work opens out. Dimensions closed: 22 x 41 x 25 cm (approx. 8 ⅝″ x 16 ⅛″ x 9 ¾″). Dimensions open: 22 x 75 (approx. 29 ½″) x 25 cm. The detached ball has a diam. of 6.5 cm (approx. 2 ½″).

224

225

The following four works by **ETIENNE MILNER** (English, contemporary) were stolen from a private residence in Northampton, England on September 1, 2018. *L18.1626:

224. **ETIENNE MILNER.** ***12-Year-Old Girl,*** 2001. Bronze. 137.16 x 71.12 cm (approx. 54″ x 28″).

226

225. ***8-Year-Old Boy,*** 2001. Bronze. 121.92 x 71.12 cm (48″ x 28″).

226. ***5-Year-Old Girl,*** 2001. Bronze. 112.78 x 101.6 cm (44 ½″ x 40″).

227

227. ***3-Month-Old Baby Girl,*** 2001. Bronze. 63.5 x 35.56 cm (25″ x 14″).

TAPESTRIES, TEXTILES

228

The following two works by **JOSH FAUGHT** (American, born 1979) were stolen from a storage unit in Linden, NJ on May 22, 2018. *L18.1458:

228. ***Taking the Road Less Frazzled,*** 2015. Hand-woven gold lame, hemp, and cotton, with pins and a resin can of V8, mounted on stretched linen. 182.88 x 127.16 cm (72″ x 54″).

229

229. ***Trick List,*** 2015. Hand-woven silver lame and cotton, with a laminated trick list and a giant clothespin, mounted on stretched linen. 175.26 x 129.54 cm (69″ x 51″).

STOLEN ART

DECORATIVE ARTS

Miscellaneous

230. ***Table Snuff Box,*** 1820. Gold and enamel. Maker's mark in lozenge: CCS. *L18.503. Stolen from a private residence in London, England on February 1, 2018.

230

ANTIQUITIES

The following four objects were stolen from a private residence in Mézières-Les-Cléry, France on September 23, 2018. *L18.1784 and *L18.1697:

231. **Unknown Artist** (Greek, 6th century BC). ***Belt.*** Gold. H: 10 cm (approx. 4″); W: 28 cm (approx. 11″).

231

232. **Unknown Artist** (Carthaginian, 100-200 BC). ***Dama de Ibiza.*** See color photo on inside back cover.

233. **Unknown Artist** (Parthian, 100-200 BC). ***Libation Vase.*** Ivory. H: 27 cm (approx. 10 ½″). W: 15 cm (approx. 6″).

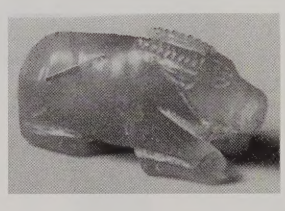
233

234. **Unknown Artist** (Proto-Elamite Period (Iran, 2000 BC). (approx. 10 ½″). W: 12 cm (approx. 4 ¾″).

234

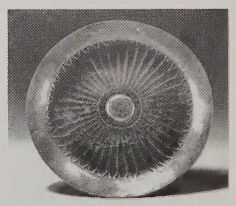
The following two objects were stolen in transit in Geneva, Switzerland on January 1, 2007. *L18.1729:

235. **Unknown Artist** (Egyptian, 1st century BC). ***Amulet Representing a Lying Oryx.*** Carnelian. Length: 2.4 cm (approx. 1″).



235

236. **Unknown Artist** (Greek, 4th-5th centuries BC). ***Phiale Mesomphalos.*** Silver. Length: 20.5 cm (approx. 8″).



236

MISSING ART*

WORKS ON PAPER

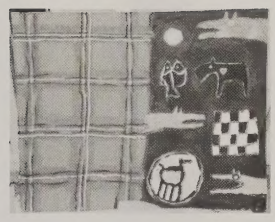
21

21. **FRANÇOIS DE RIBAUPIERRE** (Swiss, 1886-1981). ***A Woman's Portrait,*** 1953. Pastel on paper. 70 x 60 cm (approx. 27 ½″ x 23 ⅜″). Signed and dated l/l. *L18.1323. Missing from an auction house in Geneva, Switzerland on February 28, 2018.

RECOVERED ART*

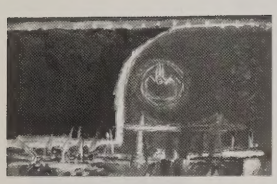
PAINTINGS

The following two paintings by **WILLIAM BROWN** (Canadian, 1953-2008), missing from a gallery in Ross-on-Wye, England on January 18, 2013 (*L15.71; see *IFAR Journal,* Vol. 16, Nos. 1&2, 2015, p. 82, nos. 50 and 51), were recovered in May 2017:



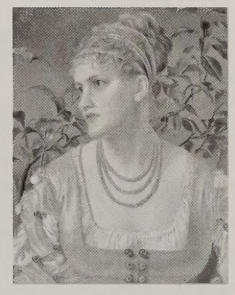
44

44. ***The Inner Man,*** 2000. Acrylic on canvas. 150 x 122 cm (approx. 59″ x 48″).



45

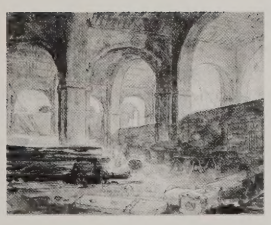
45. ***Newport Approaching the Storm,*** 2003-2004. Acrylic on canvas. 116.99 x 46.06 cm (approx. 46″ 75 ¾″).



46

46. **EMMA SANDYS** (English,). ***Portrait of Mary Emma Jones,*** 1874. Oil on board. 50.8 x 38.8 cm (20″ x 15 ¼″). *L18.1899. Stolen from a private residence in Norfolk, England on January 16, 1988 after it was featured on the Antiques Roadshow. Located by the owner after it was sold at a Christie's UK auction in July 2018.

WORKS ON PAPER



47

47. **HUBERT ROBERT** (French, 1733-1808). ***The shipyard at Civitavecchia,*** 1761. Watercolor, black chalk, pen and brown and black ink on paper. 22.5 x 29.9 cm (approx. 8 ¾″ x 11 ¾″). *L04.1065. Stolen from a private residence in Brussels, Belgium on June 19, 2004. Located with the help of the ALR and recovered in March 2018.

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*Numbering for the Volume 19 Cumulative Indices of Missing Art and Recovered Art began with Vol. 19, Nos. 1&2.

RECOVERED ART

SCULPTURE

48. **BARTOLOMEO AMMANATI** (Italian, 1511-1592). ***The Seated Man.*** Wax. H: 29.84 cm (11 ¾″). *N08.52. Stolen as a result of the Salander-O'Reilly Galleries fraud scandal. Recovered with the help of the ALR in May 2018.

48

49. **HENRY MOORE** (English,). ***Upright Motive E,*** 1968. H: 30 cm (approx. 11 ¾"). Bronze. Ed no. 2/9. *N83.369. Stolen from a gallery in London, England on August 1, 1983. (See *Stolen Art Alert,* Vol. 4, No. 9, December 1983, p. 27, no. 1311.) Recovered with the help of the ALR in 2018.

49

DECORATIVE ARTS

50. **Unknown Artist**. ***Pair of Vases*** (18th century). Alabaster with gilded bronze heads of rams at the sides, on a marble base. Ht: 25 cm (approx. 9 ¾″). *L98.1854. Stolen along with numerous other items from a gallery in Paris, France on June 13, 1998. Located with the help of the ALR and recovered in July 2018.

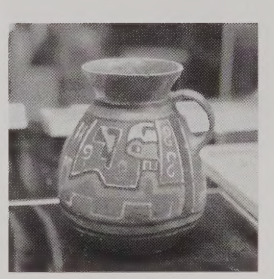
50

ANTIQUITIES

51. **Unknown Artist** (Etruscan, 30-800 BC). ***Statuette of a Lar.*** Bronze. *L01.571. Stolen from the Archaeological Museum in Siena, Italy on April 1, 1988. Recovered in England with the help of the ALR and returned to Italy in October 2018.

51

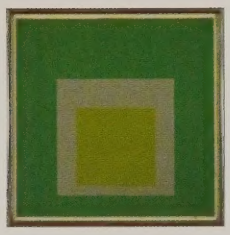
52. **Unknown Artist** (Pre-Columbian, c. 518 AD). ***Jar.*** From the site of Tiwanaku. Recovered with the help of the ALR from an auction house in Cambridge, England and returned to Bolivia on October 16, 2018.



52

STOLEN ART

Paintings



174

178

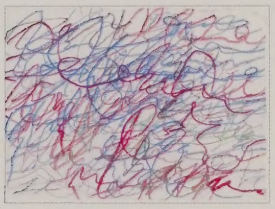
195

174. JOSEF ALBERS (1888-1976). ***Study for Homage to the Square: Teen Age.*** Oil on masonite. 45.72 x 45.72 cm (18″ x 18″). *L18.1243. Stolen from a private residence in Rome, Italy on September 1, 2017.

178. CLAUDE MONET (French, 1840-1926). ***The Cliff at Aval, Étretat (morning),*** 1885. Oil on canvas, 80 x 97 cm (31 ½″ x 38 ⅛″). Signed l/l. *L18.1282. Stolen in transit between Argentina and Australia on December 15, 2017.

195. JAN VAN KESSEL (Flemish, 1626-1679). ***Allegory of Earth/Animals,*** ca. 1650-1670. Oil on copper. 20 x 30 cm (approx. 7 ¾″ x 11 ¾″). Signed l/r. *L18.1269. One of six paintings stolen from a private residence in Waasmunster, Belgium on July 5, 2018. See also items 193, 194; 196-198 inside.

Works on Paper



207

202

202. ALEXANDER CALDER (American, 1898-1976). ***Untitled,*** 1966. Gouache on paper. 76.2 x 55.88 cm (30″ x 22″). Signed l/r. *L18.1179. Stolen from a private residence in New York, NY on January 25, 2018.

The following two works on paper by **CY TWOMBLY** (American, 1928-2011) were among 12 stolen from a shipping company in Lugano, Switzerland on March 1, 2018. See also items 206; 208-213; 215-217. *L18.1242:

207. *Untitled,* 2003. Wax crayon and pencil on handmade paper. 28 x 38.5 cm (approx. 11″ x 15 ⅛″). Initialed and numbered u/l on verso in pencil: CT(1).

214

232

214. *Untitled,* 1986. Acrylic on paper. 28.5 x 24.31 cm (approx. 11 ¼″ x 9 ½″). Numbered 4 of 7 in wax crayon on l/l of verso.

Antiquities

232. Unknown Artist (Carthaginian, 100-200 BC). ***Dama de Ibiza.*** Ivory. H: 30 cm (approx. 11 ¾″). W: 8 cm (approx. 3 ⅛″). *L18.1784. One of four works stolen from a private residence in Mézières-Les-Cléry, France on September 23, 2018. See also items 231; 233, 234 inside.

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